TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~398.~~ 190

THE PRESIDENT AND DIRECTORS OF THE BANK OF WEST TENNESSEE, PLAINTIFF IN ERROR,

vs.

THE CITIZENS' BANK OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED DECEMBER 13, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 398.

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vs.

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a 1410. Supreme court of La.

Filed May 27th, 1867.
(Signed) M. P. JULIAN,
Dep'y Clk.

State of Louisiana, fifth district court of New Orleans.

PRESIDENT, DIRECTORS, & CO. OF BANK of West Tennessee
vs.
CITIZENS' BANK OF LA. } No. 15870.

Hays, Adams & Moise, atty's for app'lees; A. Pitot, att'y for app'lant.

Transcript of appeal made returnable to the supreme court of the State of La. on the fourth Monday in May, 1867.

Rehearing refused, January 25th, 1869.
(Indorsed:) December 14th, 1868.

b UNITED STATES OF AMERICA, *ss:*

The President of the United States to the hon. the judges of the supreme court of the State of Louisana, greeting:

Because, in the record of the proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had in said suit between the president and directors & co. of the Bank of West Tennessee, and the Citizens' Bank of La., No. 1410 of the docket of said court, wherein was drawn in question the validity of an authority emanating from the convention of said State, to wit, article one hundred & twenty-seven (127) of the constitution of said State, which article is in these words, (all agreements the consideration of which was confederate money, notes, or bonds, are null and void, and shall not be enforced by the courts of this State,) on the ground of its being repugnant to the Constitution of the
c United States, and the decision was in favor of such, its validity, a manifest error hath happened to the great damage of the said Bank of West Tennessee, as by the complaint and judgment appears:

We, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you se'd the record and proceedings aforesaid, with all things concerning same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

d Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court, the 8th day of June, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] D. URBAN,
Clerk U. S. C. C.

(Indorsed:)
Allowed June 9th, 1870.

JOSEPH P. BRADLEY,
Asso. Just. Sup. C't U. S.

Filed June 13th, 1870. M. P. Julian, dep'y clerk.

1 State of Louisiana, fifth district court of New Orleans.

Petition.—Filed April 24th, 1866.

PRESIDENT, DIRECTORS, & COMPANY OF BANK OF WEST TENNESSEE *vs.* CITIZENS' BANK OF LOUISIANA. } No. 15870.

To the honorable the judge of the fifth district court of the parish of Orleans, and State of Louisiana.

The petition of the president, directors, & company of the Bank of West Tennessee, a bank duly incorporated & chartered by the
2 laws of the State of Tennessee, and domiciliated and doing business in the city of Memphis, & State of Tennessee, respectfully represents:

That the Citizens' Bank of the State of Louisana, a banking corporation duly incorporated by the legislature of the State of Louisiana, and domiciliated and doing business in the city of New Orleans, and State of Louisiana, is justly indebted to your petitioners in the sum of ninety-three thousand three hundred and eighty $\frac{97}{100}$ dollars for money deposited with them & collected by them for and on account of petitioners, with interest thereon from the 10th September, 1863, as will more fully appear by the account herewith filed and prayed to be taken as a part of this petition and all of which said sum remains due and unpaid; and your petitioners aver that they have made repeated amicable de-
3 mand of the said defendant to pay the said sum so due and unpaid, but that the said defendant has failed & refused to pay the same or any part thereof.

Wherefore, the premises considered, petitioners pray that citation may issue commanding the said defendant to appear and answer this petition, and that at the hearing of the same judgment may be rendered for the said sum of $93,380 97 *dollars*, with five per centum per annum interest thereon from the said 10th day of September, 1863, and all costs, and for any and all further general and equitable relief, and as in duty, &c.

(Signed) HAYS, ADAMS & MOISE,
Atty's for Pl'ff.

Document annexed to petition.—Filed April 24th, 1866.

PRESIDENT, DIRECTORS, & CO. OF BANK of West Tennessee *vs.* CITIZENS' BANK OF LA. } No. 15870.

4 *Citizens' Bank of La. to Bank of West Tennessee, Dr.*

SEPTEMBER 10TH, 1863.

To this amount due in cash, balance for deposits, & collections made by the Citizens' Bank of Louisiana, for and on account of the Bank of West Tennessee..... $93,380 97

Citation.—April 24th, 1866.

PRESIDENT, DIRECTORS, & CO. OF BANK OF West Tennessee
vs.
CITIZENS' BANK OF LA. } No. 15870.

STATE OF LOUISIANA,
Fifth District Court of New Orleans:

To Citizens' Bank of La.:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver
5 your answer to the same in the office of the clerk of the fifth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable Charles Leaumont, judge of the said court, the 24th day of April, in the year of our Lord, 1866.

(Signed) F. A. LEREMIRAIS,
D'y Clerk.

Sheriff's return.

Received April 24th, 1866, and, on the twenty-fifth day of the same month and year, served copy of the within citation and accompanying petition personally on John G. Gaines, president of the Citizens' Bank of La., defendants herein. Returned same day.

(Signed) PHI. LACOSTE,
D'y Sheriff.

Answer.—Filed May 2nd, 1866.

6 PRESIDENT, DIRECTORS, & CO. OF BANK of West Tennessee
vs.
CITIZENS' BANK OF LA. } No. 15870.

The answer of the Citizens' Bank of La. to the petition herein filed against them.

Respondents deny being indebted to plaintiffs in any manner or form, and as a special defense to plaintiffs' claim, say:

That, in 1862, plaintiffs used to send to defendants notes and drafts for collection, and to draw checks against their cash balances, and also from time to time remitted to respondents sealed packages containing C. S. treasury notes to be placed to their credit to pay their checks, all which collections and payments were, to the full knowledge and consent of plaintiffs, made in confederate treasury notes.

That, on the 20th of May, 1862, the balance at credit of plaintiffs was $290,887.

That, on said day, respondents sent to the plaintiffs, at Mem-
7 phis, $200,000, which they received, and demand instructions as to the balance, which were given, not to send the same.

That, afterwards, to wit, on the 17th August, 1863, by Special Order No. 202, issued by Gen'l Banks, the several banks of this city were required to pay over to S. B. Holabird, chief Q. M., or his agent, all monies in their possession belonging to any person in the service of the Con-

federate States, &c., &c., or standing upon their books to the order of any corporation, association, &c., in hostility to the United States.

Respondents further represents that they refused to comply with said order No. 202, as regards the balance in favor of plaintiffs, until he was distinctly informed by Gen'l Banks, the commanding officer, that the balance due to banks located in Memphis, Tennessee, were embraced in order 202.

That, in obedience to the vesting authority to the country, respondents did, on the 10th Sept., 1863, pay over to W. McClure, A. Q.
8 M., the sum of $90,887 22, being the balance standing at the credit of plaintiffs.

Respondents, therefore, contend that they cannot be made liable to plaintiffs after having paid the money to their credit, under military orders, and pray that plaintiffs' demand be dismissed with costs. And as in duty bound, &c.

(Signed) ARMAND PITOT,
Of Counsel.

Affidavit & motion for a commission.—Filed May 3d, 1866.

PRESIDENT, DIRECTORS, & CO. OF BANK OF West Tennessee
vs.
CITIZENS' BANK OF LOUISIANA. } No. 15870.

John G. Gaines, president of the Citizens' Bank of Louisiana, being duly sworn, says that Eugene Rousseau, formerly cashier of the
9 Citizens' Bank, is about to depart from the State, and that he fears that he may be deprived of the advantage he expects to derive from the testimony of said witness if the same be not taken beforehand.

(Signed) JOHN G. GAINES,
President.

Sworn to & subscribed before me on the 2nd May, 1866.

(Signed) ED. MEUNIER,
3d J. P.

On motion of A. Pitot, of counsel for defendants, it is ordered that a commission issue directed to Ed. Meunier, 3d justice of the peace of New Orleans, ordering him to take the testimony of E. Rousseau, witness for defendants, to be *sued* in evidence on the trial of this case.

Interrogatories & cross-interrogatories propounded to Ben. May and others, of Memphis, Tenn.—Filed Nov. 19th, 1866.

10 PRESIDENT, DIRECTORS, & CO. OF BANK of West Tennessee
vs.
CITIZENS' BANK OF LA. } No. 15870.

Interrogatories to be propounded to Ben. May, of Memphis, Tennessee, and others of that city, witnesses on behalf of plaintiff in the above-stated cause, whose answers will be offered in evidence on the trial of the same.

It is hereby stipulated and agreed between counsel for plaintiff & de-

fendant that affidavit to take the testimony herein referred to, and special commission to take the same, and all technical objections are waived, and that the testimony of the witnesses may be taken before any justice of the peace, commissioner for the State of Louisiana, or other officer legally authorized to administer oaths.

New Orleans, La., Oct. 27th, 1866.

(Signed) HAYS, ADAMS & MOISE,
Att'y for Pl'ff.

(Signed) ARMAND PITOT,
Att'y for Def't.

11 Interrogatory 1st. Are you acquainted with the parties to this suit?

Inter'og. 2nd. Do you know anything of the dealings between the parties, plaintiff & defendant; when they commenced and how long continued; of what character? State fully.

Interrog. 3d. Do you know anything of the account current herewith filed? If yea, state all you know on that subject.

Interrog. 4th. Do you know whether the Bank of West Tennessee consented or acquiesced in the payment of the cash balance to their credit over to the quartermaster of the United States Army under Major Gen'l Banks' order? State all you know on this subject.

Interrog. 5th. State if you have charge or possession of the books of the Bank of West Tennessee; how long have you had charge
12 of the same; whether they keep full and correct books of accounts; and, if so, what is the cash balance now due from the Citizens' Bank of Louisiana to the Bank of West Tennessee? State fully.

Interrog. 6th. Do you know whether or not the Bank of West Tennessee ever directed or instructed the Citizens' Bank of Louisiana to collect all or any funds due them on bills receivable, checks, &c., in confederate notes or currency; & if so, to what extent?

Interrog. 7th. During the late rebellion of a portion of the southern States what was the political status of the directors of the Bank of West Tennessee? and state if there were ever any proceedings instituted and consum'ated for the confiscation of the rights & properties of said bank, or any notice given of the seizure of its money in the hands of the Citizens' Bank of Louisiana. State any other matter or thing within
13 your knowledge of benefit or advantage to plaintiff.

(Signed) HAYS, ADAMS & MOISE,
Att'ys for Pl'ff.

Cross-interrogatory:

First. When you answer to the third interrogatory propounded by plaintiff say how the said account, filed by plaintiff, came to the possession of their attorney; who gave it to them; how did it come in the hands of those who gave it to plaintiff's attorneys to institute this suit?

(Signed) ARMAND PISTOT,
Att'y for Def't.

Answers of Ben. May to interrogatories above.—Filed Nov. 19th, 1866.

PRESIDENT, DIRECTORS, & CO. OF BANK OF West Tennessee
vs.
CITIZENS' BANK OF LA. } No. 15870.

14 The deposition of Ben. May, a witness on behalf of the plaintiff in the above-stated cause, to be read as evidence therein, taken before R. B. Miller, a justice of the peace in and for the county of Shelby, and State of Tennessee, at his office in the city of Memphis, in said county & State, on the 16th day of November, 1866, upon interrogatories herewith filed.

Said witness, BEN. MAY, aged about 43 years, being first duly sworn, deposing, says:

In answer to the first interrogatory by plaintiff. I am.

Answer to 2ond interrogatory. I have been familiar with the dealings between the parties since some time in the year 1860. The defendant was the plaintiff's correspondent at New Orleans, collected its paper there, and held the funds, subject to plaintiff's order. The parties had dealings prior to my election as an officer of the Bank of West Tennessee, in May, 1860. Then there was an interval in their dealings
15 until July, 1860, when they began again, and these dealings continued between the parties from that time until interrupted by the war.

Answer to plaintiff's 3d interrogatory. The account herewith filed, marked Exhibit "A," was sent by Eugene Rousseau, cashier of the Citizens' Bank of Louisiana, to J. M. Hill, acting president of the Bank of West Tennessee, at Memphis, under cover of a letter dated May 2ond, 1865, which letter is herewith filed and marked Exhibit "B," and I make these exhibits part of my answer. Mr. Hill handed the account and letter over to the Bank of West Tennessee, and I, as cashier of the said bank, gave the account to Mr. Adams, one of the counsel for the plaintiff in this cause. The letter has been retained until this time.

16 Answer to plaintiff's 4th interrogatory. The plaintiffs had no notice of the payment to the quartermaster of the United States Army under Gen'l Banks until its drafts were returned under protest, which gave the reason of the refusal of the defendant to pay them. The plaintiff did not in any way acquiesce in said payment of the cash balance to its credit in hands of defendant to said quartermaster.

Answer to 5th interrogatory. I was cashier of the Bank of West Tennessee from May, 1860, and up to the present time, and had charge of the entire office work of said bank, and employed none but competent bookkeepers and assistants—had balances &c. regularly taken off, and to my knowledge all the books in said bank were kept correctly. The cash balance now due from defendant to plaintiff, leaving out checks on de-
17 fendant not paid by it, is $90,887 22, which corresponds with said account of the defendant, marked Exhibit "A."

Answer to 6th interrogatory. The plaintiff never gave the defendant any instructions as to what funds defendant should receive for plaintiff, and never instructed defendant to receive confederate notes or currency for collections on bills receivable or checks belonging to plaintiff or due to it.

Answer to 7th interrogatory. I only know that none of the directors of the Bank of West Tennessee were in the confederate or rebel service,

and that during the war, the meetings of the board and elections for directors were held as required by the charter, and that there were never any proceedings instituted and consummated for the confiscation of the rights and properties of the said bank, and that no notice was given
18 of the seizure of its money in the hands of the defendant—by this I mean no official notice, but it was certified by the notary in the protests before-mentioned that defendant's officers gave said seizure as the reason for dishonoring the drafts. I further know that no action has been taken or instituted to confiscate the private property of any of the directors of said bank.

Answer to 8th interrogatory. I can state that the Bank of West Tennessee never had any arrangement or understanding with any of its customers or correspondents by which confederate money or currency should be received for its liabilities or demands, but expected to pay and be paid in par funds at the time of maturity or demand. Almost the entire business, and it was large between the plaintiff and defendant, was
19 the remittance by plaintiff of bills and drafts on New Orleans for collection by defendant, the proceeds to go to the credit of plaintiff.

Answer to the cross-interrogatory of defendant. In my answer to plaintiff's third interrogatory, I have fully answered this interrogatory and told all I know about the matter referred to. And further saith not.

(Signed) BEN. MAY.

Sworn to & subscribed before me this 16th day of November, 1866.
(Signed) R. B. MILLER, *J. P.*

Also, the deposition of James T. Taylor, a witness for the plaintiff, taken at the same time and place, to be read as evidence in said cause and taken upon said interrogatories.

20 Answer of James T. Taylor to interrogatories.

Said witness, aged about 40 years, being duly sworn, deposes and says:

Answer to 1st interrogatory. I am well acquainted with the Bank of West Tennessee, and know the present and former cashier; and the former president of the Citizens' Bank of Louisiana.

Answer to plaintiff's 2ond interrogatory. I was the general book-keeper of the Bank of West Tennessee from June, 1860, up to January 1st, 1866, except for about a month in the spring of 1861, and am well conversant with the transactions and dealings between plaintiff and defendant, as it was my duty to charge all remittances, and to credit all checks, and all bills and drafts on New Orleans passed through my hands.
21 The dealings between plaintiff and defendant commenced in July 1860, and continued until interrupted in 1862 by the war, though the business has not yet been fully settled. The business between plaintiff and defendant was almost exclusively in the remittance by the Bank of West Tennessee of drafts and bills on New Orleans for collection, these drafts being sent to the Citizens' Bank of Louisiana who was to collect the same, holding the proceeds subject to check or order of the plaintiff.

Answer to pl'ff's 3d interrogatory. The account which is part of this deposition, marked Exhibit "A," came into my hands through the officers of the bank for examination, and also the letter marked Exhibit "B," and was by me examined and found to be correct.

22 Answer to pl't'ff's 4th interrogatory. I never heard of any such

acquiescence or assent, and do not think it could have been given without my knowledge. I therefore do not know, but think such acquiescence was never given.

Answer to pl'ff's 5th interrogatory. I have answered concerning my charge of the books of *of* plaintiff in my answer to interrogatory 2nd. The books of the Bank of West Tennessee have been correctly kept ever since my connection began with it, and the cash balance now due from the defendant to plaintiff is ninety thousand eight hundred and eighty seven $\frac{22}{100}$ dollars, after deducting checks drawn by plaintiff on defendant, but not paid.

Answer to pl'ff's 6th interrogatory. I cannot state positively,
23 but as I was confidential clerk in Bank of West Tennessee, I am very sure that said bank never directed or instructed the Citizens' Bank of Louisiana to collect any funds due plaintiff on bills receivable, checks, &c., in confederate money or notes. I had access to all the correspondence of the bank, and do not think any such direction would have been made without my knowledge, and I do not know of any such arrangement with any other customer or correspondent of the plaintiff.

Answer to pl'ff's 7th interrogatory. None of the directors of the Bank of West Tennessee were in the rebel or confederate service; some of them were well known to be Union men, and a quorum of the board could have been organized in Memphis on almost any day during the war.
24 I never heard of any proceedings having been instituted or consummated for the confiscation of the rights & properties of said bank, nor did I ever hear of any notice being given plaintiff of the seizure of its money in the hands of the Citizens' Bank of Louisiana; by this, I mean regular lawful notice. I did not know of it till after the return of the protested drafts.

Answer to pl'ff's 8th interrogatory. Everything embraced in the account, Exhibit "B," is on account of drafts and bills remitted by plaintiff to defendant, at New Orleans, for collection, as is shown by the books of plaintiff, and according to my recollection.

Answer to cross-interrogatory of defendant. I have stated, in
25 my answer to plaintiff's 3d interrogatory, all that I know about the matter alluded to. And further saith not.

(Signed) JAMES T. TAYLOR.

Sworn to & subscribed before me this 16th day of Nov'r, 1866.

(Signed) R. B. MILLER, *J. P.*

The foregoing depositions were taken before me, as stated in the caption, and were by me put in the post office, at Memphis, directed to the clerk of the 5th district court, New Orleans, La., without being altered, or out of my hands after they were taken.

(Signed) R. B. MILLER, *J. P.*

E'hibit marked A annexed to answers of May & Taylor to interrogatories.—Filed Nov'r 19th, 1866.

PRES'D'T, DI'R'CT'RS, & CO. OF BANK OF WEST Tenn.
vs.
CITIZENS' BANK OF LA. } No. 15870.

DR. *Bank of West Tennessee, Memphis, in ac. with Citizens' B'k of Louisiana.* CR.

26 E.

1862.			1862.		
M'ch 17.	To check 1531	$65 50	M'ch 15.	Balance	$183,001 03
	" " 1532	2,122 17	17.	Shannon & S. 439	3,000 00
18.	" " 1533	380 04	"	F. P. Hogan, & &	500 00
20.	" " 1537	10,000 00	18.	Treas. C. S	5,000 00
21.	" " 1480	938 39	"	do	100 00
	" prot. Perkins, & Co	6 30	"	Union Bank	58,416 19
26.	Check 1539	250 00		E. Nalle & Co	120 00
27.	" " 1538	1,998 00	20.	Black & Bro	3,000 00
29.	" " 1542	6,000 00	24.	Brander, C., & Co	233 80
31.	" " 1543	169 48		Bailley, T., & Co	92 26
Ap'l a. w.				J. W. Moore	2,000 00
1-1.	" " 1522	624 66		do	2,000 00
5.	J. L. Laurence	180 00		Turcotte & B	82 81
9.	Check 1541	498 05	25.	Kilpatrick & Co	136 28
11.	" 1542	400 00	27.	Turcotte & Bro	1,200 00
12.	" 1553	3,000 00		Hamilton	150 28
14.	Prot. J. J. Enoch	5 25	28.	Shannon & S. 448	2,500 00
17.	Check 1520	4,261 35		Bank of N. O	50 00
	" 1555	1,000 00	29.	Kennedy & Co. 435	3,000 00
19.	" 1559	25,000 00		Shannon & S. 458	2,500 00
21.	Prot. Vernon P. & Clay	5 20		Kennedy & Co., omitted 5th	4,000 00
	Check 1551	248 75		E. Conerey	1,020 72
May 6.	Prot. J. H. Kennedy & Co	10 00		T. A. Hamilton	1,916 92
8.	Check 1561	1,900 00	31.	T. Shreve	507 84
12.	Prot. J. H. Kennedy & Co	5 00		Brander, C., & Co	155 00
26.	Confed. notes sent them	200,000		Southern Bank	21 50
1862.				Wilson & Y	2,500 00
May 31.	Balance	93,395 65		Bank Commerce	728 99
			Ap'l 1.	Kennedy & Co. 423	4,000 00
				Ass't Treas. C. S	53 02
			2.	Black & B. 453	3,100 00
			4.	A. D. Kelly & Co	1,673 83
				Lonsdale & Co	6,000 00
			14.	B'k of N. Orleans	820 96
				Smoker & Co	1,508 99
				Wood & L	318 57
				Crescent Office	100 00
			5.	Patten, S., & Co	225 38
				Gallrech & P	4,393 91
				do do	29,380 71
			7.	J. Wood & Co	4,000 00
				A Brown & Co	120 00
				Nelson & Co	5,000 00
			11.	Smith & W	588 27
			19.	Mech's & Trad'rs B'k	41 50
				Citiz'ns B'k	86 35
				Canal Bank	296 18
				H. T. Lonsdale	5,000 00
				Howel, Gayle & Co	2,000 00
			21.	Ass't Treas. C. S	100 00
			22.	Shannon & T. 471	2,500 00
			25.	J. H. Kennedy 456	3,000 00
			May 3d.	Smoker & Co	215 00
					352,456 29
1862.					
June 2d		352,456 29			
2.					
2.	To prot. T. H. Kilpatrick	5 09			
16.	" " A. D. Kelley & Co	5 09			
July 18.	" " Rosser P. & Co	4 50			
21.	Balance	93,380 97			
		93,395 65	1862.		
			May 31.	Balance	93,395 65
					93,395 65
1862.					
Oct. 30.	To check 1581	1,496 25			
1863.					
M'ch 23.	" " 1579	997 50			
Sept. 11.	Cash bal'ce p'd U. S. Gov't, Sept. 10, 1863, under special order, No. 202, issued by Gen'l Banks, dated Aug. 17, '63, in Confed. notes	90,887 22			
		93,380 97	1862.		
			May 31st.	Balance	93,380 97
					93,380 97

27 *Exhibit marked "B" annexed to answers of May & Taylor to interrogatories.—Filed Nov'r 19th, 1866.*

PRESIDENT, DIRECTORS, & CO. OF BANK OF West Tenn.
vs.
CITIZENS' BANK OF LA. } No. 15870.

JNO. G. GAINES, *Presd't.* EUG. ROUSSEAU, *Cash'r.*

CITIZENS' BANK OF LA., BANKING DEPARTMENT,
New Orleans, May 2d, 1865.

J. M. HILL, esq'r., *Memphis.*

DEAR SIR: Your favor of 22nd ulto. is received with memorandum of enquiring, to which I reply as follows:

1st. The funds to the credit of the Bank of West Tennessee, Memphis, were signed by order of General Banks, and paid over to his quartermaster on 10th September, 1863. The order was numbered 202, and dated 17th August, 1863, and was published in the newspa-
28 pers of the day, but we have not a copy by us.

2nd. A statement of the account as called for is enclosed.

3d. The account shows how much the balance was at the time of the seizure, and how long it had stood at the credit.

4th. If the draft named had been presented to the bank before 18th September, 1862, it would have been paid on presentation; after that date, and until the balance was paid over to the Federal authorities, it would have required the assent of the military authorities, which was readily obtained in several similar cases.

5th. You can take my depositions to prove the above facts.

Resp't yours,
(Signed,) EUG. ROUSSEAU, *Cashier.*

As I have it in contemplation to leave here shortly, you should direct any depositions to be taken to the "Cashier of the Citizens' Bank" in order that they may be answered by the acting cashier during my absence.

29 *Order & continuance.—Extract from minutes, Dec'r 12th*, 1866.

PRESD'T, DIRECTORS, & CO. OF BANK WEST Tenn.
vs.
CITIZENS' BANK OF LA. } No. 15870.

This case fixed for this day was, by consent of counsel, ordered to be continued till the 17th inst., at 11 o'clock, a. m., for hearing of the promissory note cases fixed for that day, said continuance to be subject to the consent of the Citizens' Bank of Louisiana, defendant in suit.

Commission.—Filed Dec 13th, 1866.

PRESD'T, DIRECTORS, & CO. OF BANK OF West Tenn.
vs.
CITIZENS' BANK OF LA. } No. 15870.

Fifth district court of New Orleans.

The State of Louisiana to any judge, or justice of the peace, or
30 La. commissioner in Memphis, Tenn., greeting:

Know ye that we, reposing confidence in your prudence and fidelity, do, by these presents, give unto you authority diligently to examine all witnesses whatever, as well on the part of the plaintiff as of the defendant, in a certain suit now pending in the fifth district court of New Orleans, wherein President and Directors of the Bank of West Tennessee are plaintiffs, and the Citizens' Bank of Louisiana, are defendants.

Therefore, we desire you, that at certain times and places, by you to be appointed for that purpose, you cause the said witnesses to come before you; that you then and there examine them apart upon their respective corporal oaths, first taken before you upon the Holy Evangelists, that you reduce their examination to writing; and when you shall
31 so have taken them, that you send the same with this commission, closed up under your seal, to us in our fifth district court, at the city of New Orleans, without delay.

Witness the Honorable Cha's Leaumont, judge of our said court, this 13th day of December, in the year of our Lord one thousand eight hundred and sixty-six, and in the ninety-first year of the independence of the United States.

[L. S.] (Signed) A. D. BERMOUDY,
D'y Clerk.

Witnesses for defendant: 1st, C. P. Norris; 2d, J. J. Murphy; 3d, W. H. Cherry. For plaintiff: 1st, Ben. May.

Interrogatories & cross-interrogatories.—Filed Dec'r 13th, 1866.

PRESD'T, DIRECTORS, & CO. OF BANK OF WEST Tenn.
vs.
CITIZENS' BANK OF LA. } No. 15870.

32 Interrogatories to be propounded to Messrs. C. P. Norris, J. J. Murphy, W. H. Cherry, Ben. May, and others:

Int. 1st. Do you know the Bank of West Tennessee, established in Memphis?

Int. 2d. Please state whether it be to your knowledge that, in the year 1861, or 1862, the said bank took its assets away from Memphis, and carried them somewhere beyond the Federal lines?

Int. 3. If they removed from Memphis, to what point did they carry their assets?

Int. 4th. When did confederate treasury notes become the general currency in Memphis, and up to what time did it continue to be so?

Int. 5th. If you state that the Bank of West Tenn. carried their assets beyond the Federal lines, state where they did business in the place where the assets were carried to?

33 6th. Who were the president, cashier, and directors of *of* the Bank of West Tenn., in Memphis, before the assets were carried beyond the Federal lines?

7th. Who were the president, directors, and cashier of the Bank of West Tennessee in the place beyond the Federal lines where the assets were carried?

(Signed) ARMAND PITOT,
For Def't.

Cross-interrogatories for plaintiff:

1st. If you state that the assets of the Bank of West Tenn. were removed from Memphis, state, if you know, why they were removed. Was it not done from compulsion or under military orders? State fully all you know on this subject.

2d. Was there not a majority of the directors of the bank of
34 West Tennessee in Memphis after the place was taken possession of by the United States authorities; and did they not remain there?

(Signed) ADAMS & MOISE,
Pl'ff's Att'ys.

Cross-interrogatories to BEN. MAY, propounded by defendant.

X. 1st. Where were you when the Bank of West Tenn. was beyond the Federal lines; what were you doing there?

X. 2d. If you state that the majority of the directors of the Bank of West Tennessee remained in Tennessee after the assets were taken beyond the Federal lines, state if they met as a board, and what business they did transact as such.

(Signed) ARMAND PITOT,
Def't's Att'y.

35 It is hereby stipulated and agreed between counsel for plaintiff & defendant that all technical objections as to commission and execution of the same are waived.

New Orleans, Dec'r 15th, 1866.

(Signed) ARMAND PITOT,
Att'y for Defendant.

(Signed) ADAMS & MOISE,
Att'ys for Plaintiff.

Agreement.—Filed Dec'r 13th, 1866.

PRESIDENT, DIRECTORS, & CO. OF BANK OF West Tenn.
vs.
CITIZENS' BANK OF LA. } No. 15870.

By consent of counsel this case is fixed for trial on Thursday, the 20th inst., with the understanding that the decision of the court will be suspended until the return of commissions to be taken either by plaintiffs or defendants to examine witnesses in Memphis, which return shall be handed to the court without argument. (Over.)

36 New Orleans, Dec. 13th, 1866.

(Signed) ADAMS & MOISE,
Pl'ff's Att'ys.

(Signed) ARMAND PITOT,
For Def'ts.

Order and continuance.—Extract from minutes, Dec. 20th, 1866.

PRES'D'T, DIRECTORS, & CO. BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

This case fixed for this day was called, and on motion of counsel—
It was ordered that the case be continued until Monday, 21st of January, prox'o, at 11 a. m., & that attachments issue for absent witnesses, returnable at that time.

Note of evidence.—Filed Jan'y 21st, 1867.

PRES'D'T, DIRECTORS, & CO. BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

37 Plaintiff offers in evidence the testimony of Ben. May, taken under commission, and filed 19th November, 1866.
Also, exhibit marked "A," filed 19th November, 1866, referred to in above deposition of Ben. May.

Order & continuance.—Extract from minutes, January 21st, 1867.

PRES'D'T, DIRECTORS, & CO. B'K OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

This case came on this day.
Adams & Moise for pl'ffs; A. Pitot & E. A. Bradford for def'ts.
After hearing pleadings, testimony, and counsel—
Ordered that the further hearing of said case be continued to Wednesday, 30th of January, inst., at 11 a. m.

Order & continuance.—Extract from minutes, Jan'y 30th, 1867.

38 PRES'D'T, DIRECTORS, & CO. OF B'K OF WEST Tenn.
vs.
CITIZENS' B'K OF LA. } No. 15870.

This case fixed for this day, was, on motion, ordered to be continued to Monday, 4th Feb'y, 1867, after the trial of the promissory-note cases fixed for that day, counsel for defendant being unwell.

Order and continuance.—Extract from minutes, Feb'y 4th, 1867.

PRES'D'T, DIRECTORS, & CO. OF B'K OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

This case fixed for this day, was ordered to be continued to Friday, 15th inst., at 11 a. m., counsel for defendant being ill & absent.

Interrogatories propounded to Jacob Barker.—Filed Jan'y 21st, 1867.

39 PRES'D'T, DIRECTORS, & CO. OF BANK OF West Tenn. *vs.* CITIZENS' BANK OF LA. } No. 15870.

Int. 1st. How long have you resided in the city of New Orleans; what is and has been your occupation?

2d. Were you in the city of New Orleans at the time it was taken possession of by the United States military forces during the late rebellion; and did you remain here during the years 1862, 1863, and 1864? And if yea, state, if you know, the value of what was denominated confederate currency in the month of May, 1862, and during that year; and in the month' of August and September, 1863. State fully.

3d. Do you know whether any confederate currency was sent out of New Orleans in the years of 1862 and 1863 by the consent or
40 permit of Gen'l' Butler, Banks, and others, military commanders, for the purpose of being sold or invested in cotton? If yea, state what sums you know to have been so sent out, and at what time, and by what banks or individuals. Please state fully all you know on this subject.

4th int. State any other matter you may know as to dealings in and *prior* of confederate money during the war or rebellion.

(Signed) ADAMS & MOISE,
Pl'ff's Att'ys.

JAN'Y 16TH, 1867.

It is agreed between counsel for plaintiff and defendant that the deposition of Mr. Barker in the foregoing interrogatories, and following cross-interrogatories may be taken, waiving commission, affidavit, and technicalities, but reserving all legal objections as to substance or relevancy.

(Signed) ADAMS & MOISE,
Att'ys for Pl'ffs.

(Signed) ARMAND PITOT,
For Def't.

41 Cross-interrogatories:

If you say that, in 1862 or 1863, confederate currency was sent out of New Orleans by consent or permit of Generals Butler, Banks, and other military commanders, for the purpose of being sold, to be invested in cotton, please state if it is not to your knowledge that such consent or permit was given to pay the banks of other States dealing with the banks of New Orleans the balance due them in confederate money. And if you know of such instances, state them, and state particularly those in which you had anything to do to obtain such permit or consent.

(Signed) ARMAND PITOT,
For Def't.

Testimony.—Filed Feb'y 15th, 1867.

PRES'D'T, DIRECTORS, & CO. OF BANK West Tenn. *vs.* CITIZENS' BANK OF LA. } No. 15870.

42 Plaintiffs offer in evidence the statement of Jacob Barker, filed this day, and marked No. 1.

Also, statement of Jacob Barker, marked No. 2, filed this day.

Also, certificate of clerk as to opening of circuit court of United States, marked No. 3, filed this day.

Also, proclamation of Abraham Lincoln, President of the United States, of October 20th, 1862, establishing provisional court in Louisiana, to be filed.

J. L. DELERY, for defendant:

I am now cashier of the Citizens' Bank. I was general book-keeper in 1861 & 1862, and assisted the cashier when necessary. The bank used to send to all the banks with which it did business monthly accounts, under envelope, without letters. The Bank of West Tennessee was one of the banks to whom we sent these monthly state-
43 ments, except the usual correction of errors. The suspension of specie payment by the banks took place on the 16th September, 1861. From that time the currency in this city was confederate money. The use of confederate money was forbidden by Gen'l Butler about 20th of May, 1862. During that time all drafts on the bank, payable in currency, were understood to mean confederate money. During that time all drafts payable in gold were so specified on the draft. When moneys in the bank were sequestered and seized as belonging to rebels, we never gave notice to the parties that the money was so seized. There were about one hundred and fifty persons & corporations whose money was so seized. The reason that no notice was given was that no communication was allowed outside of the Federal lines, even if it was wished to give such notice.

44 Cross-examined:

I can't tell exactly to what the seizure of the 150 persons amounted to in gross. I have not looked at the list. General Butler took possession of this city on 1st May, 1862. I can't tell without looking at the record how much confederate money the Citizens' Bank then had in its possession. I will furnish a statement of the amount. I can't tell how much confederate money was sold, paid out, or sent out from the bank from the time General Butler took possession of the city up to the issuance and execution of the order No. 202, of August, 1863, by Gen'l Banks. I will try to make and furnish a statement of it. I know nothing of any agreement between the Bank of West Tennessee and the Citizens' Bank, that confederate money should or should not be considered as currency; don't know of any express under-
45 standing between the two banks that confederate money should be regarded as currency. I recognize this account shown me, as being the account made by the Citizens' Bank, and the balance of $90,887 22 paid to the United States Government, the first balance, in March 15th, 1862, was $183,001 03. I can't tell whether the bills which constituted this account were payable in confederate currency or not, without seeing the bills themselves. The Citizens' Bank did not pay over to Gen'l Butler the identical confederate notes it had collected for

the Bank of West Tennessee; it could not be; the collections were made in bulk & not set apart. I believe that Memphis, in 1863, was in possession of the Federal forces. When Gen'l Banks issued order No. 202, as we gave no notice to other parties, we did not give notice to the Bank of West Tennessee, although Memphis was in possession
46 of the Federal forces. I can't tell positively whether or not the Citizens' Bank, after General Butler took possession of the city, received on deposit, collected, or otherwise received and placed in its vaults, confederate currency. I can tell by reference to its books.

THEODORE SHUTE, for defendant:

I was in Memphis in the latter part of 1861, 'till first of May, 1862, occasionally, but not residing there. I saw no other currency there at that time but confederate currency.

Cross-examined:

Confederate currency then passed at par; no gold was sold for it, but it passed in all business transactions at par, being the only currency. When I returned to this city, in the early part of May, 1862, I found General Butler's order fixing the day at which confederate money should cease to be used. I think about the 20th May,
47 1862. I don't know, of my own knowledge, that, during the summer of 1862, large amounts of confederate currency were sent out of the Federal lines by permission of Gen'l Butler, but it was a matter publicly understood. The value of confederate currency during the summer of 1862 varied from 20 to 40 c'ts on the dollar. The navigation between this city and Memphis was opened after Port Hudson fell, about the 8th or 10th July, 1863. Memphis was taken possession of by the United States forces about the middle of June, 1862. Vicksburg was taken possession of by them on the 4th July, 1863.

Defendants offer in evidence the testimony of E. Rousseau, taken by consent, filed this day.

Also letter marked B, filed this day.

Also document marked C, filed this day.

Also document marked D, filed this day.

48 Also document marked E, filed this day.

Also letter of Ben. May, marked No. 4, filed this day.

Also letter marked No. 5, filed this day.

Also letter marked No. 6, filed this day.

Also letter marked No. 7, filed this day.

Also letter marked No. 8, filed this day, being answer to letter No. 6.

Also letter marked No. 9, filed this day.

Also letter marked No. 10, filed this day.

Also letter marked No. 11, filed this day.

Also six drafts from Bank of West Tennessee on Citizens' Bank, marked respectively from 12 to 17, both inclusive; filed this day.

S. H. TORREY, for defendant:

Document marked F, shewn witness, he says: This memoran-
49 dum is in my handwriting, and I attested it as a correct statement of what took place between Mr. John G. Gaines and Gen'l Banks at the time. I was employed by 4 or 5 banks, and that was the reason Mr. Gaines called on me to go to General Banks.

Defendant offers in evidence document marked F, filed this day.

Cross-examined:

When I called on General Banks with Mr. Gaines we tried to get an

exemption of the order No. 202, to relieve the Citizens' Bank from paying over this money to Col. Holabird; but General Banks insisted on the execution of the order. Mr. Gaines made an effort with General Banks to protect the Bank of Tennessee, but failed. I think the order was executed. I took a receipt for all the monies I paid to the Quartermaster's Department, and gave the receipt to Mr. Gaines or to Mr. Rousseau, then acting cashier of the Citizens' Bank. The receipts, I
50 think, were all signed by Capt. McClure, who had been detailed by Col. Holabird. I don't know that any application was ever made to the civil authorities to adjudicate the question, as at that time I was the attorney of the Bank. Had any such been made I think I should have known it. I think the provisional court was organized in the early part of 1863—in February or March of that year.

Defendant offers in evidence General Orders of Department of the Gulf, from 1st May, 1862, to 9th November, 1862, filed this day. Also General Orders issued by General Banks while commanding Department of La., portions thereof appli'able to the case, to be selected and filed by counsel.

GEORGE A. FRERET, for defendant:

I am cashier of the Union Bank of Louisiana, and has been
51 such since the establishment of the bank in 1852. The Union Bank has in its possession the check drawn by the Planters' Bank of Tenn., to the order of Ben. May, cashier of the Bank of West Tennessee.

Witness produces the original check, copy of which to be filed, is offered in evidence by defendant.

Witness says the amount of this check was paid in confederate money on 18th March, 1862, to the collector of the Citizens' Bank. The Union Bank was called upon, under order No. 202, to pay over all balances which it held for the banks in Tennessee.

Statement of Jacob Barker.—Document No. 1, *offered in evidence.—Filed Feb'y* 15*th*, 1867.

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

52 When General Butler arrived at New Orleans, about the 1st of May, 1862, he found in the Citizens' Bank about two hundred & eighteen thousand dollars confederate notes to the credit of Ward & others, confederate collectors, which the general sequestered; soon after which I suggested to him the expediency of having it sold. His reply was that he wished to drive every dollar out of the United States, and that when he called for it if he found seventy thousand gold or U. States Treasury notes in lieu of it he should be well pleased. This I considered as an authority for the bank to sell the same, and communicated the same to the bank, when it authorized me to sell the same at three dollars for one, the then market price, which I did, depositing the avails in the said bank, which remained there until some time after Gen'l Banks became our military ruler, when it was withdrawn by Capt. McClure, by
53 authority of Col. Holabird.

(Signed) JACOB BARKER.

FEB'Y 14, 1867.

Affidavit waived.

(Signed) A. PITOT, *Att'y.*

Answers of Jacob Barker—Document No. 2, offered in evidence.—Filed Febr'y 15th, 1867.

BANK OF WEST TENN. vs. CITIZENS' B'K OF LA. } No. 15870.

Answers of Jacob Barker to the interrogatories & cross-interrogatories propounded to him in the above-stated cause.

To int. 1st. I have resided in New Orleans, Louisiana, for thirty-three years. My occupation is, and has been, that of banker.

To 2d int. I was in New Orleans at the time the city was taken
54 possession of by the U. S. Army, and in the years 1862, 1863, & 1864. Confederate currency in 1862, previous to the arrival of the United States forces, ranged from 160 to 174 dollars for one hundred in gold. After their arrival it sold about three for one, in May and June 1862. Subsequently, when its use was interdicted, it fell to 10 or 15 cents on the dollar, and in the latter part of 1863 sales were made at a low figure, but no fixed value.

To 3d int. All I know as to confederate currency being sent out of New Orleans is that, in the month of May & June, 1862, I obtained several written permits from General Butler, commanding forces, to send out large amounts of confederate money in sealed packages, not to be opened within U. States lines, General Butler remarking that his great object was to rid the United States territory of every dollar of confederate currency. He did not, to my knowledge, know what was to
55 be done with it in confederate lines, except that large amounts of Confederate States currency held by banks here, and which they said they had collected in these funds, General Butler allowed to be sent out to such creditors, and the Citizens' Bank was so allowed.

The Citizens' Bank of New Orleans, La., was one of the banks that sent out large sums of confederate currency, I think some three hundred and thirty-three thousand dollars. I was also informed and believed that the Louisiana State Bank sent out a much larger amount, in all much more than a million of dollars C. S. currency; and probably near two millions was sent out by banks and individuals.

To 4th int. I have state' all I know.

To cross-interrogatory. I do not know of any permit to take
56 out C. S. currency to purchase cotton, but know that Gen'l Butler did permit balances due in confederate lines to be paid in confederate money. I know that was the case with the Citizens' Bank, for which purpose I obtained permits. This is all I know.

(Signed) JACOB BARKER.

Affidavit waived.

(Signed) A. PITOT, *Att'y.*

Certificate as to opening of dist. court.—Document 3, offered in evidence.—Filed Feb'y 15th, 1867.

BANK OF WEST TENN. vs. CITIZENS' BANK OF LA. } No. 15870.

District court of the United States for the eastern district of Louisiana.

I certify that the above court, now the district court of the United

States for the district of Louisiana, was reorganized and resumed business on the 24th day of June, 1863.

57 Clerk's office, Jan'y 21st, 1867.

(Signed) A. LOEW,
D'y Clerk U. S. District Court of Louisiana.

Certificate as to opening of U. S. circuit court.—Filed Feb'y 15th, 1867.

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

Circuit court of the United States, sixth circuit & eastern district of Louisiana.

I certify that the above court, now the circuit court of the United States, fifth circuit and district of Louisiana, was recognized and resumed business, on the 24th day of June, 1863.

Clerk's office, New Orleans, Jan'y 21st, 1867.

(Signed) F. B. VINOT,
D'y Clerk U. S. Circuit Court
5th Circuit and District of La.

58 *Document No. 4.—Letter of Ben. May, offered in evidence.—Filed Feb'y 15th, 1867.*

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

BANK OF WEST TENNESSEE,
Memphis, Oct. 16th, 1861.

EUGENE ROUSSEAU, Esq.,
Cash'r, New Orleans.

DEAR SIR: I have received your favor of 14th inst., with inclosures stated.

Please find inclosure as stated below, for our account.

Very respectfully,
(Signed) BEN. MAY, *Cashier.*

Confederate treasury notes, $10,000.

Document No. 5.—Letter of Ben. May, offered in evidence.—Filed Feb. 15th, 1867.

59 BANK OF WEST TENNESSEE *vs.* CITIZENS' BANK OF LA. } No. 15870.

BANK OF WEST TENNESSEE,
Memphis, Sept. 19th, 1861.

EUG. ROUSSEAU, Esq.,
Cash'r, New Orleans.

DEAR SIR: Please find inclosure as stated below for collection & for our account.

Very respecfully,
(Signed) BEN. MAY, *Cash'r.*

Confederate treasury notes, $2,800.

F. M. White, p't on S. O. Nelson & Co., 24th Sept., $6,000.

Document No. 6, offered in evidence.—Filed Feb'y 15th, 1867.

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

60

BANK OF WEST TENNESSEE,
Memphis, Feb'y 1st, 1862.

EUGENE ROUSSEAU, Esq.,
Cashier, New Orleans.

DEAR SIR: I have received your favor of 29th ult'o. with enclosure as stated.

Please find enclosure as stated below for collection and our credit.

Very respectfully,
(Signed) BEN. MAY, *Cash'r.*

Shelton Jones & Co. on Wilson & Young, $1,250 00.
Rolling & Co. 1 D\s' H. M. Robinson & Co., 262 05.
J. G. Libbald, 30 D/ D/ Shannon & Co., 2,500.

Our president, T. A. Nelson, esq'r', leaves for your city to-morrow, and will be there several days; by him I send a deposit of T'r notes, $100,000.

Document No. 7, offered in evidence.—Filed Feb'y 15th, 1867.

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

61 *Coupons on confederate bonds, held by Bank of West Tennessee, due 1st March, 1862.*

No. bond.	Am't.	No. bond.	Am't.	No. bond.	Am't.
6110	40	6275	40	6274	40
6249	40	6277	40	6250	40
6251	40	6253	40	6254	40
6253	40	6255	40	6256	40
6257	40	6258	40	6259	40
6105	40	6106	40	6107	40
6108	40	6109	40	6111	40
6112	40	6113	40	6114	40
6115	40	6116	40	6117	40
6118	40	6119	40	6120	40
6121	40	6122	40	6123	40
6124	40	6125	40	5968	40
5975	40	6273	40	6101	40
5977	40	6102	40	6103	40
6104	40	5977	40	5978	40
5976	40	5835	20	3837	20
3839	20	3839	20	3829	20
3830	20	3838	20	3832	20
3831	20	3834	20	3833	20
3836	20	3861	20	5970	40
5964	40	5744	2	5732	2
5811	2	5730	2	5743	2
5735	2	5734	2	5733	2
6368	36 46	6337	36 46	6369	36 46
6366	36 46	6365	36 46	6263	36 46
6364	36 46	4347	18 23	6370	36 46
4348	18 23	4349	18 23	4350	18 23
	$891 61				
	815 38				
	853 61				
	$2,560 60				

62

BANK OF WEST TENN.,
Memphis, Feb'y 26th, 1862.

EUG. ROUSSEAU, Esq.,
Cashier, New Orleans.

DEAR SIR: I hand you enclosed coupons confederate bonds, as above, $2,560 60. As this int. is payable in coin, will you so oblige me as to collect & send me the coin by express.

Very respectfully,
(Signed) BEN. MAY, *Cashier.*

Document No. 8.—Filed Feb'y 15th, 1867.—Offered in evidence.

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

(Copy.)

NEW ORLEANS, *March 4th*, 1862.

BEN. MAY, Esq'r, *Cashier, Memphis.*

DEAR SIR: Your confederate bond coupons, sent us 26th ult.,
63 amounting to $2,560 60, have been collected, of which $560 60 in gold and $2,000 in silver.

We send them to you by express as per enclosed receipt from express company.

Yours, respectfully,
(Signed) EUG. ROUSSEAU, *Cashier.*

Your favor of 1st inst. to hand with stated enclosures.

A true copy.
(Signed) J. L. DELERY, *Cash'r.*

Document No. 9.—Filed Feb'y 15th, 1867.—Offered in evidence.

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

BANK OF WEST TENN.,
Memphis, March 11th, 1862.

EUG. ROUSSEAU, Esq.,
Cashier, New Orleans.

DEAR SIR: I have received your favor of 7th inst.; please find
64 enclosures, as stated below, for collection and our credit.

Very respectfully,
(Signed) BEN. MAY, *Cashier.*

Ass't t'r Confed. States	$5,000
Fisher, Whyers & Co. on F. P. Hogan	500

Have not received ac. for last month; ac. sent 17th March, 1862.

Document No. 10.—*Filed Feb'y* 15*th*, 1867.—*Offered in evidence.*

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

BANK OF WEST TENNESSEE,
Memphis, Ap'l 16*th*, '62.

EUG. ROUSSEAU, Esq.,
Cashier, New Orleans.

DEAR SIR: I have received your favor of . I have drawn duplicate of check 1555, Ap'l 9th, $1,000, favor G. H.
65 Bruce & Co. Please find enclosure, as stated below, for collection and our credit.

Very respectfully,
(Signed) BEN. MAY, *Cashier.*

Ass't treas'r	$100
Vernon, Porter & Clay 16–19 Ap'l	1,267 44

Document No. 11.—*Filed Feb'y* 15*th*, 1867.—*Offered in evidence.*

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

BANK OF WEST TENN.,
Memphis, March 7*th*, 1862.

EUG. ROUSSEAU, Esq'r.,
Cashier, New Orleans.

DEAR SIR: I have received your favor of 4th inst., with enclosure; have also received the coin per express. Please find enclosure, as stated below, for collection and our credit.

Very respectfully,
(Signed) BEN. MAY, *Cashier.*

Post office check on treas'r, N. O	$1,293 14
A. G. Black on Black Byington 20 D. S'	3,100 00

66 *Document No.* 12.—*Filed Feb'y* 15*th*, 1867.—*Offered in evidence.*

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

BANK OF WEST TENN.,
Memphis, March 6*th*, 1862.

$414 43.] [No. 1521

Pay to the order of B. M. Lowe & Co. four hundred fourteen & $\frac{43}{100}$ (in currency) dolls.
(Signed) BEN. MAY, *Cashier.*

To CITIZENS' BANK,
New Orleans, La.

(Endorsed:)

B. M. LOWE & CO.

(Written across the face in red ink:) No. 1521. Four hundred & $\frac{43}{100}$ dolls.

(Signed) THEODORE KELSEY, *Clk.*

Document No. 13.—*Filed Feb'y* , 1867.—*Offered in evidence.*

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

BANK OF WEST TENN.,
Memphis, March 7th, 1862.

$1,149 20.] [No. 1525

Pay to the order of P. A. Giraud & Co. eleven hundred and 67 forty-nine & $\frac{20}{100}$ dollars in currency.

(Signed) BEN. MAY, *Cashier.*

To CITIZENS' BANK,
New Orleans, La.

(Endorsed:) P. pro—

P. A. GIRAUD & CO.
A. GRANIER.

(Written across the face in red ink:) No. 1525. Eleven hundred forty-nine & $\frac{20}{100}$ dollars.

(Signed) THEODORE KELSEY, *Clk.*

Document No. 14.—*Filed Feb'y 15th*, 1867.—*Offered in evidence.*

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

BANK OF WEST TENN.,
Memphis, March 8th, 1862.

$3,401 10.] [No. 1526

Pay to the order of Bartley, Johnson & Co. thirty-four hundred one & $\frac{10}{100}$ dollars in currency.

(Signed) BEN. MAY, *Cashier.*

To CITIZENS' BANK,
New Orleans, La.

(Endorsed:) BARTLEY, JOHNSON & CO.

(Written across the face in red ink:) No. 1526. Thirty-four hundred one $\frac{10}{100}$ dollars.

(Signed) THEODORE KELSEY, *Clk.*

Document No. 15.—*Filed Feb'y* 15*th*, 1867.—*Offered in evidence.*

68 BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

BANK OF WEST TENN.,
Memphis, M'ch 13*th*, '67.

$65 50.] [No. 1531.

Pay to the order of Cossitt, Hill & Co. sixty-five & $\frac{50}{100}$ in currency.
(Signed) BEN. MAY, *Cashier.*

To CITIZENS' BANK,
New Orleans, La.

(Endorsed:) Pay to the order of Clapp, Mitchell and Jack.
COSSITT, HILL & CO.
CLAPP, MITCHELL & JACK.
Per M. C. RANDALL.

(Written in red ink across the face:) No. 1531. Sixty-five & $\frac{50}{100}$ dollars.
(Signed) THEODORE KELSEY, *Clk.*

Document No. 16.—*Filed Feb'y* 15*th*, 1867.—*Offered in evidence.*

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

BANK OF WEST TENNESSEE,
Memphis, March 26*th*, 1862.

$6,000.] [No. 1542.

Pay to the order of Moore & Bro., in currency, six thousand
69 dollars.
(Signed) BEN. MAY, *Cash'r.*

CITIZENS' BANK,
New Orleans, La.

(Endorsed:) Pay Bank of New Orleans.
(Signed) MOOR & BROTHER.

(Written across the face in red ink:) No. 1542. Six thousand dollars.
(Signed) MAY.

Document No. 17.—*Filed Feb'y* 15*th*, 1867.—*Offered in evidence.*

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

BANK OF WEST TENN.,
Memphis, March 26*th*, 1862.

$169 48.] [No. 1543.

Pay to the order of Payne, Huntington & Co., in currency, one hundred and sixty-nine $\frac{48}{100}$ dollars.
(Signed) BEN. MAY, *Cashier.*

To CITIZENS' BANK,
New Orleans, La.

(Endorsed:) For deposit.

PAYNE, HUNTINGTON & CO.

(Written across the face in red ink:) No. 1543. One hundred and sixty-nine $\frac{48}{100}$ dollars.

(Signed) MAY.

70 *Document marked A.—Filed Feb'y 15th, 1867.—Offered in evidence.*

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

CITIZENS' BANK OF LA.,
New Orleans, May 20th, 1862.

BEN. MAY, Esq.,
Cashier, Memphis.

DEAR SIR: As you have in our hands a large amount of currency deposits, without being able to bring it back, we think it more prudent on both sides to send you be the bearer, L. E. Simonds, esq., a large portion of said funds. The balance may be sent to you in the same manner if you desire it; on which please instruct us by return of Mr. S.

Yours, respectfully.

(Signed) EUG. ROUSSEAU,
Cashier.

Document B.—Filed Feb'y 15th, 1867.—Offered in evidence.

71 BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

"Mr. L. E. Simonds."

BANK OF WEST TENN.,
Memphis, 24th May, 1862.

EUG. ROUSSEAU, Esq.,
Cashier, New Orleans.

DEAR SIR: I have received your favor of 20th per Mr. L. E. Simonds, together with $200,000 tr. notes, placed to credit y'r account.

Very respectfully,

(Signed) BEN. MAY, *Cashier.*

I have a good many checks out, which may pass through the lines or may be held, should I not be able to take them up here. I have not charged you with any of my collections for some time. Do not send me the balance. Our paper past due you will hold, as I fear to take the risk of transmission.

Document C.—Filed Feb'y 15th, 1867.—Offered in evidence.

72 BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

[Special Orders No. 202.—Extract.]

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, August 17th, 1863.

The several banks and banking corporations in the city of New Or-

leans will, without delay, pay over to Col. S. B. Holabird, chief quartermaster, or to such officer of the Quartermaster's Department as he may designate, all monies in their possession belonging to or standing upon their books to the ceedit of any person registered as an enemy of the United States, or engaged in any manner in the military, naval, or civil service of the so-called "Confederate States," or shall have been or may hereafter be convicted of rendering any aid or comfort to the enemies of the United States; and all monies in their possession
73 or standing upon their books to the credit of any corporation, association, or pretended government in hostility to the United States.

"These funds will be held and accounted for by the Quartermaster's Department, subject to the future adjudication of the Government of the United States."

By command of Major.General Banks.

(Signed) RICHARD B. IRWIN,
Ass't Adj't General.

OFFICE CHIEF QUARTERMASTER,
DEPARTMENT OF THE GULF,
New Orleans, La., August 17th, 1863.

Captain McClure will obtain & hold this money, and account for it to the United States Treasury. No disbursement of it will be made without my order, or that of the commanding general of the Department.

(Signed) S. B. HOLABIRD,
Col. & Chief Quartermas'r.

A true copy. (Endorsement.)

(Signed) JOHN McCLURE,
Capt. A. Q. M.

74 *Document D.—Filed Feb'y 15th, 1867.—Offered in evidence.*

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

OFFICE OF THE CHIEF QUARTERMASTER
DEPARTMENT OF THE GULF,
New Orleans, Sept. 10th, 1863.

Received from the Citizens' Bank, pursuant to special order No. 202, ninety two thousand seven hundred and twenty and $\frac{35}{100}$ dollars, in confederate notes, being aggregate amount of the balance held by said bank to the credit of the several banks named in the following list, located in the so-called Confederate States, in the amounts respectively affixed to each.

Bank of West Tenn	90, 887 22
Chattanooga Savings Institution	1, 833 13
	$92, 720 13

(Signed) JNO. McCLURE,
Capt. & A. Q. M.

Document "E."—Account current.—Filed Feb'y 15th.—Offered in evidence.

75 BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

Document "E" is already copied on page of this record. Look at said page for reference.

Document "F."—Filed Feb'y 15th, 1867.—Offered in evidence.

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

Having some doubt as to whether banks located in Memphis were embraced in order 202, I called this day, in company with Mr. S. H. Torrey, on Maj. Gen'l Banks, commanding the Department of the Gulf, and after a short conversation with him on the subject of bank balances to be paid over to the quartermaster, under order No. 202, I distinctly asked him if it was his understanding that the balances due to banks located in Memphis, Tenn., are embraced in order 202; to
76 which General Banks replied as distinctly—it is.

(Signed) JNO. G. GAINES, *P. P. T'r.*

CITIZENS' BANK, LA., *N. O., Sept. 9th*, 1863.

The foregoing statement of the conversation between Maj. Gen'l Banks and Jno. G. Gaines, acting president of the Citizens' Bank, is correct & true. In reply to my suggestion that Memphis, being within the Federal lines, was not included in Special Order 202, the general said it was a military post.

(Signed) SAM. H. TORREY.

Testimony of Eug. S. Rousseau, taken by consent.—Offered in evidence.—Filed Feb'y 15th, 1867.

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

Testimony of Eugene Rousseau, formerly cashier of the Citizens' Bank, taken by consent, on behalf of the Citizens' Bank.

Document marked "A," is copy of a letter which, as cashier
77 of the Citizens' Bank, I wrote to cashier Ben. May, on 20th of May, 1862. Document marked "B," is the original letter of Ben. May, (cash'r,) in reply to mine of 20th May. It is dated 24th of same month; was written & signed by him.

Document marked "C" was handed to me about August, 1863, by Capt. McClure, A. Q. M.; I know his signature, and the one affixed to said document is genuine; he handed that document as his authority for demanding delivery of the cash balances belonging to banks in the Confederate States; he claimed the balance at the credit of the Bank of West Tenn., as one of those which he was instructed to take possession of. The president refused to pay that balance until he could see Maj. Gen'l Banks, and remonstrate against the seizure of the balance at the

credit of the Bank of West Tennessee, on the plea that Memphis, and a large portion of the State of Tennessee, was under the virtual
78 authority of the United States; the answer of Gen'l Banks was, that said balance was to be delivered to the Q. M. Department; Capt. McClure, A. Q. M., called, consequently, on the bank, and took possession of said balance, and receipted for it. Document "D" is the receipt of Capt. McClure, & is signed by him. Document E is a copy of the account current of the Citizens' Bank with the Bank of West Tennessee, at Memphis; a copy of the account is generally sent to all banks at the time they are balanced; I do not recollect when the copy of the account with the Bank of West Tenn. was sent; the letter copy book will probably show it; the accounts-current are often sent without any letter of advice; that it is sent, but merely by placing them under envelopes, and mailing them.

Cross-examined, says:

79 The balance to the credit of the Bank of West Tenn., on 9th Sept., 1863, was $90,887 22. What I stated above of the interview between Maj. Gen'l Banks and Mr. Gaines, president of the Citizens' Bank, I know from Mr. Gaines and Mr. Torrey—not of my own personal knowledge. I know of no action in law or before the civil authorities on the part of the bank, or any of its officers, to be relieved from compliance with the military order No. 202 of Maj. Gen'l Banks, requiring the bank to pay these monies. On the 15th March, 1862, the cash balance to the credit of the Bank of West Tenn. was $183,001 03; that, subsequent to date, I find in the account no packages of confederate notes to have been received from the Bank of West Tenn. for their credits; that three orders were received from said bank on the A. treasurer of the C. S. to wit, $5,000 & $100 on the 18th of March, and $100 on the 21st of April. We had no written instruction from said
80 Bank of West Tenn. to receive their collections in C. S. treasury notes. The Citizens' Bank was not the fiscal agent of the Confederate States. It is not to my knowledge that the Citizens' Bank was ever consulted respecting the issuing *or* order No. 202, or that the president ever expressed a desire that such an order should be issued. The military authorities called upon the Citizens' Bank for a statement of the balances held by us belonging to banks situated in the Confederate States, & upon that statement being rendered, seized all of said balances, including that of the Bank of West Tenn. No application for redress was made by the Citizens' Bank to the President of the U. S., or any other authority at Washington, to be relieved from the execution of said order. The Citizens' Bank suspended specie payments about the middle of September, 1861. The funds of the Bank of West Tennessee in the Citizens' Bank, were used in the same manner as other funds in the bank, deposited by other parties.

81 Examined by the bank:

I am sure the Bank of West Tennessee, of Memphis, knew that the Citizens' Bank were receiv*ed* none but confederate notes in payment of their collections, and that their drafts on us were being paid in the same currency. I have no written or other evidence that they knew it. Previous to the 15th of March, 1862, the Citizens' Bank received, at different times, from the Bank of West Tenn., packages containing confederates notes, to be placed at their credit. It was a matter of public notoriety, here and at Memphis, that there was no other currency in New Orleans but confederate notes. When I paid Capt. McClure, on

the 10th Sept. 1862, I did so under the authority of the president of the bank, Mr. Gaines. Previous to his ordering me to pay the amount to Capt. McClure, he told me that General Banks, on whom he had called, insisted on its being paid. Mr. Gaines showed me a paper drawn up by himself relating the circumstances and result of his call on
82 General Banks for that purpose. F is the identical paper shown me by Mr. Gaines at the time.

(Signed) EUG. ROUSSEAU.

Sworn to & subscribed before me on this 16th May, 1866.

(Signed) PAUL W. COLLENS,
3rd Justice of the Peace.

The above testimony is taken, subject to all legal exceptions as though fully reserved during its progress, both as regards the testimony itself and the documents accompanying the same, all paraphed with the initials of the witness.

(Signed) HAYS, ADAMS & MOISE,
Att'ys for Pl'ff.

(Sig'd) ARMAND PITOT,
Att'y for Def't.

This reference approved. F. A. L.

"Reference."—Order & continuance which follows this testimony. Extract from the minutes of the 15th Feb'y, 1867, is copied on page 89 of this record.

Testimony.—Filed Feb'y 19th, 1867.

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

Plaintiff offers in evidence interrogatories filed this day, and marke' 1.

83 Also, answer to above, marked 2, filed this day.

Defendants now offer in evidence copy of check of D. Weaver, filed this day, marked 3.

J. L. DELERY recalled for plaintiff.

The answers to interrogatories furnished by me, & filed above, contains all the information I could obtain from the books of the bank. I don't know what amount of confederate money the bank had on hand on the 17th August, 1863. The Citizens' Bank, before the 1st May, 1862, was in the habit of reducing its own notes in confederate currency; but these notes were not made redeemable in that currency. There was no *confederate* account kept of the confederate currency belonging to the Bank of West Tennessee—it all went on the general account. Mr. Charles W. Cammack was paying teller of the Citizens' Bank when the city was taken possession of by the United
84 States forces in 1862. I know of no purchase made by the Citizens' Bank of confederate money after the city was taken possession of. I know not if the other drafts, except the one in favor of the Bank of West Tennessee, were made payable in confederate currency.

BEN. MAY for plaintiff.

I resided in Memphis till 28th May, 1862. I was cashier of the Bank

of West Tennessee. After May, 1862, I was, part of the time, with the assets of the bank, in Mississippi, Georgia, and Alabama, till after the surrender of the confederate forces—till July, 1865. During the whole of that time I was cashier of the Bank of West Tennessee. There was no time-paper to run to maturity, which had expressed on its face payable in currency or confederate money; it was simply dollars & cents. Some transactions, as sight, may have been so expressed, left to the bank for collection. I don't remember whether the
85 $5,000 draft was expressed as payable in currency; I don't think it was. It was drawn on the assistant treasurer of the Confederate States, and, I believe, deposited with us. We had no other way of getting possession of them, unless deposited with us by customers of the Bank of West Tennessee. The $59,000 check was drawn after Nashville had fallen; and the Bank of Tennessee, and the Bank of West Tenn., who wanted to get rid of that currency, sent it here for collection. I don't think it was credited to Planters' Bank of Tennessee; but I don't remember. After the balance was struck, showing the balance in March, 1862, the great bulk of the accounts for $290,000 was time-paper. I don't remember any draft but the $5,000—one a check for $100, and the check for $59,000, already referred to. The $200,000 sent by Citizens' Bank to the Bank of West Tenn., was by the latter on 24th May, 1862, I believe. Memphis was taken pos-
86 session of by the United States forces on 6th June, 1862. Gold, up to about the 24th May, 1862, was worth, I think, about $160 to 175 % in confederate currency in Memphis; it may have been higher or lower. It fluctuated a good deal, and I have no means of remembering exactly.

Cross-examined:

I don't recollect any other check or draft, except that in favor of the Union Bank, payable in confederate currency after the time account was rendered. There was a time in Memphis when confederate currency was the only currency—that was when Memphis was under the rule of the confederate authorities. Special orders were issued about the 25th April, I think, requiring confederate currency to be received. I suppose that confederate currency, at that time, was received all over the South as it was in Memphis; but I never knew of any order requiring it to be received at New Orleans as the currency. We never sent any notice to the Citizens' Bank not to receive any more
87 confederate currency for the Bank of West Tenn. The Bank of West Tenn. never gave any directions to the Citizens' Bank on the subject.

In chief:

Two drafts shewn witness. He says:

These two drafts were drawn by the Bank of West Tennessee on the Citizens' Bank, & returned protested for non-payment.

(Plaintiffs offer in evidence the two drafts above referred to, and the protests thereof, now filed and marked, respectively, 4 & 5.)

These checks were drawn in favor of J. M. Hill, and, I suppose, he sent them to New York, and I knew nothing further of them till they were returned by Mr. Cossett, of New York.

CHA'S W. CAMMACK, for plaintiff.

I remained in the Citizens' Bank till about 15th September, 1862, after the city was taken by Gen'l Butler. The city was taken in

88 May, 1862. It would be impossible *to* me to tell how much confederate money was paid out at that time—several hundred thousand dollars per day; but I can't tell the aggregate. All payments were made in confederate money at that time—it was the currency. I think the Citizens' Bank sent an agent to some banks in the confederacy to pay off their balances in confederate money. Mr. Simonds, I think, was sent. I know that, at one time, many depositors were alarmed *that* General Butler would seize the balances in bank, and withdrew their deposits. The deposits in the bank were much reduced on that account. Mr. Barker sold some confederate money, by direction of Gen'l Butler. General Butler seized it, and Mr. Barker made the sales; the bank did not make sales. I know of no other sales except these. I can't say what was the amount of confederate currency in the bank at the time that I left the city; the books will show it. I
89 returned to the city on 1st Jan'y, 1863. I was absent about three months. I can't say what amount of confederate currency there was in the bank when I returned. That currency was taken out of the cash account, as we were prohibited from paying it.

Plaintiffs offer in evidence the testimony of C. P. Norris, J. J. Murphy, Ben. May & W. H. Cherry, all taken under commission & filed this day; also, interrogatories accompanying above commission and filed 24th December, 1866.

Order & continuance.—Extract from the minutes, Feb'y 15th, 1867.

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

This cause came on this day for trial: Adams & Moïse for pl'ff; A. Pitot & E. A. Bradford for def't.

After hearing pleadings, testimony, and counsel, the hour for adjournment having arrived, it was ordered that said case be continued
90 for Tuesday, the 19th inst. at 11 a. m.

Reference on page 82 of this record as to this order & continuance.
F. A. L.

Document marked No. 1.—Offered in evidence.—Filed Feb'y 19th, 1867.

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

I want—first, statement of how much confederate currency was in the vaults in possession of the Citizens' Bank at the time Gen'l Butler took possession of the city of New Orleans?

None. 2d. How much confederate currency in all was sent out of the city by the Citizens' Bank to pay its debts, after the city was taken possession of by the U. S. forces until the 17th August, 1863, and how much sent out after during the rebellion?

None. 3d. How much confederate currency was sold by the Citizens' Bank from the time Gen'l Butler took possession of the city, from that until the close of the war?

91 Impossible to know. None. 4th. How much confederate currency was collected by the Citizens' Bank after Gen'l Butler took possession until the 17th August, 1863, and from that to the close of the war?

Impossible to know. 5th. How much confederate currency was paid out to depositors, citizens and others, after Gen'l Butler took possession of the city until 17th August, 1863?

Impossible to know. 6th. How much confederate currency was exchanged by the Citizens' Bank for property or other obligations during the rebellion?

Document No. 2.—Offered in evidence.—Filed Feb'y 19th, 1867.

BANK OF WEST TENNESSEE *vs.* CITIZENS' BANK OF LA. } No. 15870.

Answers of J. L. Delery, cashier of the Citizens' Bank of Louisiana, to interrogatories.

To the first. On the 24th April, 1862, the amount of confederate
92 currency in the vaults of the Citizens' Bank was $1,925,730.

To the 2ond. To the 17th August, 1863, the amount of confederate currency sent out of the city by the Citizens' Bank was about $300,000, including $200,000 sent to the Bank of West Tennessee. After the above date none was sent out.

To the third. The bank never sold any confederate money, but an amount of $219,000 was seized by the U. S. authorities as belonging to the Confederate States, and was afterwards sold, at the request of Gen'l Butler, by Mr. Barker.

To the fourth. It is impossible to tell, but till 19th May, 1862, the whole transactions of the bank were in confederate currency.

To the fifth. Impossible to know; the books do not show it, because no separate account was ever kept of confed. currency.

93 To the sixth. Impossible to know; the books do not show it. Same reasons as above.

(Signed) J. L. DELERY.

Document No. 3.—Offered in evidence.—Filed Feb'y 19th, 1867.

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

PLANTERS' BANK OF TENNESSEE,
Nashville, March 10th, 1862.

$58,416 19.] [No. 2087.

Pay to the order of Ben. May & Co., in confederate notes, fifty-eight thousand four hundred and sixteen $\frac{19}{100}$ dollars.

(Signed) D. WEAVER, *Cashier.*

To the CASHIER OF UNION BANK, *New Orleans.*

(Written across the face in red ink :) O. Gray, j'r, A. teller.

I certify this to be a true copy original in possession of Union Bank of Louisiana.
Feb'y 15th, 1867.
(Signed) GEO. A. FRERET, *C.*

(Endorsed :) Pay Eug. Rousseau, cashier, or order.
(Signed) BEN. MAY, *Cashier.*

Ante : BOZONIER, *Runner.*

94 *Document No. 4.—Note & protest offered in evidence.—Filed Feb'y 19th, 1867.*

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

Note.

0,000.] BANK OF WEST TENNESSEE,
Memphis, Jan'y 16th, 1864.

Pay to the order of J. M. Hill forty thousand dollars.
(Signed) BEN. MAY.
Cashier.

To CITIZENS' BANK, *New Orleans, La.*

(Endorsed :) Pay to the order of—
A. M. FORTIER, *Cash'r.*

(Written in red ink across the face :)
(Endorsed :) Pay to the order of F. H. Cossitt, esq.
J. M. HILL.

Pay to James Buell, cash., or order.
F. H. COSSITT, *New York, N. Y.*

Pay to the order of A. M. Fortier, cashier, for collection, account of James Buell.
New York, N. Y.

Protest.

STATE OF LOUISIANA,
City of New Orleans:

By this public instrument of protest be it known that, on this 15th day of February, in the year one thousand eight hundred and sixty-four, at the request of the cashier of, and holder for, The Bank of America, holder of the original draft, whereof a true copy is on the reverse
95 hereof written, I, Alphonse Barnett, notary public in and for the city of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft to James D. Denegre, president of the Citizens' Bank of La., of this city, and demanded of him payment thereof, and was by him answered that the same would not be paid, in-

asmuch as the balance in said Citizens' Bank belonging to said Bank of West Tenn., Memphis, was sequestered by Major Gen'l Butler, in Sept., 1862, and paid over to the United States authorities, under special order of Maj. Gen'l Banks, on the 10th Sept., 1863, as per receipt in possession of the said Citizens' Bank.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or marker of the said draft, as against all others whom it doth or may concern for all exchange, reëxchange, damages, costs, charges, and interests suffered, and to be suffered, for want of payment of the said draft.

96 Thus done and protested in the presence of Paul Blache & C. Gustave Rebentisch, both of this city, witnesses.

In testimony whereof I grant these presents under my signature & the impress of my seal of office, at the city of New Orleans, and on the day and year first above written.

(Signed) A. BARNETT,
Not. Pub.

(Signed) PAUL BLACHE.
C. G. REBENSTISCH.

Protest.

UNITED STATES OF AMERICA,
State of Tennessee, Shelby County:

Be it known that, on the day of the date hereof, I, P. H. Heinrich, notary public for the county of Shelby, in the State of Tennessee, duly commissioned and sworn according to law, residing in the city of Memphis, in said State, at the request of the secretary of the ins. comp., the holder, presented at the office of T. A. Nelson, president of the Bank of West Tenn., the original draft, whereof a true copy is on the other

97 side written, & demanded payment thereof from T. A. Nelson, pres'd't of said bank, and I was answered that the said original draft would not be paid for the reason that the funds against which said draft was drawn had been taken possession of by the U. S. Government, and the bank is now unable to pay the same.

Whereupon I, the said notary, at the request aforesaid, have and do hereby solemnly protest against the drawer of said original draft and endorsers, and all concerned, for all exchange, reëxchange, costs, damages, and interest already suffered, and to be suffered, for want of payment thereof.

Thus done and protested at Memphis aforesaid the 7th day of November, one thousand eight hundred and sixty-five.

In testimony I have hereunto set my hand and affixed my notarial seal the day and year above written.

(Signed) P. H. HEINRICH,
Not. Pub.

Notaries fee	$1 00
Messenger's	
1 notice	50
Rev. stamps	25
	$1 75

98 *Document No. 5.—Note & protest offered in evidence.—Filed Feb'y 19th, 1867.*

BANK OF WEST TENN. vs. CITIZENS' BANK OF LA. } No. 15870.

Note.

$10,000.] BANK OF WEST TENN.,
Memphis, Jan'y 16th, 1864.

Pay to this order of J. M. Hill, ten thousand dollars.
(Signed) BEN. MAY,
Cashier.

To CITIZENS' BANK, *New Orleans, La.*

("Endorsed:)
Pay to the order of F. H. Cossitt, esq.
J. M. HILL.

Pay to James Buell, or order.
F. H. COSSITT,
New York, N. Y.

Pay to the order of A. M. Fortier, cashier, for collection, account of James Buell.
New York, N. Y.

Protest.

STATE OF LOUISIANA,
City of New Orleans:

99 By this public instrument of protest be it known that, on this 15th day of February, in the year one thousand eight hundred and sixty-four, at the request of the cashier of and holder of the original draft, whereof a true copy is on the reverse hereof written: I, Alphonse Barnett, notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft to James D. Denegre, president of the Citizens' Bank of Louisiana, of this city, and demanded of him payment thereof, and was by him answered that the same would not be paid, inasmuch as the balance in said Citizens' Bank belonging to the said Bank of West Tennessee, Memphis, was sequestered by Maj. Gen'l Butler in Sept., 1862, and paid over to the United States authorities under a special order of Maj. Gen'l Banks on the 10th Sept., 1863, as per receipt in possession of the said Citizens' Bank.

100 Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do solemnly & publicly protest, as well against the drawer or maker of the said draft as against all others whom it doth or may concern, for all damages, exchange, reëxchange, costs, charges, and interests suffered, or to be suffered, for want of payment of the said draft.

Thus done & protested in the presence of Paul Blache & C. Gustave Rebenstich, both of this city, witnesses.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.
(Signed) A. BARNETT, *Not. Pub.*

(Signed) PAUL BLACHE.
C. G. REBENTISCH.

Protest.

UNITED STATES OF AMERICA,
State of Tenn., Shelby County:

Be it known that, on the day of the date hereof, I, P. H. Heinrich, notary public for the county of Shelby, in the State of Tenn., duly commissioned and sworn according to law, residing in the city of Memphis, in said State, at the request of the sec'y of the Jackson Ins. Company, the holder, presented at the office of T. A. Nelson, pres'd't of the Bank of West Tenn., the original draft, whereof a true copy is on the other side written, & demanded payment thereof from T. A. Nelson, president of said bank, and I was answered that the said original draft would not be paid for the reason that the funds against which said draft was drawn had been taken possession of by the United States Government, and the bank is now unable to pay.

101

Whereupon I, the said notary, at the request aforesaid, have, and do hereby, solemnly protest against the drawer of said original draft, and endorsers and all concerned, for all exchange, reëxchange, damages, costs, & interest already suffered and to be suffered for want of payment thereof.

Thus done and protested, at Memphis aforesaid, this seventh day of November, one thousand eight hundred and sixty-five.

102

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

(Signed) P. H. HEINDRICH,
Not. Pub.

On the 7th day of November, 1865, I directed a notice (written) of the above instrument of protest to Ben. May, cashier, and delivered the same at his office before the departure of any mail.

(Signed) P. H. HEINRICH,
Not. Pub.

Depositions of J. J. Murphy, W. H. Cherry, C. P. Norris, & Ben. May, offered in evidence.—Filed Feb'y 19th, 1867.

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

Depositions of witnesses taken & subscribed before me, R. Dudley Frayser, a commissioner of the State of Louisiana, and duly appointed & commissioned by the executive authority thereof to reside at Memphis, in the State of Tennessee, to take the acknowledgement and proof of the execution of deeds, affidavits, depositions, or other writings to be used or recorded in said State of Louisiana, on the 20th and of December, between the hours of 9 a. m. & 5 p. m. of said days, at J. J. Murphy's and R. Dudley Frayser's office, in the city of Memphis, Shelby County, Tennessee, in pursuance of a commission hereto annexed, and to be read as evidence in a certain cause now pending in the 5th district court of New Orleans, La. wherein the president & directors of the Bank of West Tenn. are plaintiffs and the Citizens' Bank of La. defendants.

103

J. T. MURPHY, a witness known to me to be of lawful age, being before me at his office, and being by me first duly sworn upon the Holy

Evangelical to testify the truth, & nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then & there, on his oath aforesaid, to the 1st interrogatory answer—

104 To 1st int. Yes; I know the officers of the Bank of West Tennessee, at Memphis.

To 2nd int. I left Memphis in September of 1861, and went into the confederate army, and do not know when the bank left the city.

To 3d int. I do not know to what point they carried their assets. Some time in 1863, I think, I met Mr. Nelson, the pres'd't, and Mr. May, the cashier, in Montgomery, Alabama, where, I understood from them, the assets of the bank then were.

To 4th int. When I left the city in 1861, it was freely used as currency. I do not know when it ceased to be currency in Memphis, not being there.

To 5th int. I don't know whether they *done* business as a bank
105 or not in Montgomery when I saw them there.

To 6th int. When I left Memphis, in 1861, Tho's A. Nelson, esq., was president, & Ben. May cashier; I never knew of any change of those officers.

To 7th int. I cannot say, as I before stated; I was in the army and in the field all the time, and only met Mr. Nelson and Mr. May in Montgomery, Ala., as I was passing through that city.

To 1st X-int. Not being in Memphis do not know when the assets of the bank were moved, or if by accord of the managers of said bank or by compulsion.

To 2d X-int. Do not know.

(Signed) J. J. MURPHY.

Sworn to and subscribed before me this 20th day of December, 1866, at Memphis, Tenn.

(Signed) R. DUDLDY FRAYSER,
Commissioner.

106 And W. H. CHERRY, president of the Merchants' National Bank at Memphis, appeared at J. J. Murphy's office at same time, and known to me to be of lawful age, and being by me first duly sworn upon the Holy Evangelical, to testify the truth, the whole truth in regard to the matter in controversy, in the suit aforesaid, did then and there on his oath aforesaid depose & say in answer:

W. H. Cherry, president of the Merchants National Bank, being duly sworn.

To 1st int. I know the president & cashier of the Bank of West Tennessee.

To 2d int. I was not a citizen of Memphis when the late war commenced, and do not know of the removal of the Bank of West Tenn. only from hearing the officers speak of it.

107 To 3d int. I understood from the officers they carried their assets to Alabama or Georgia.

To 4th int. I suppose in the spring of 1861; that was in the time when I resided one hundred miles east of Memphis, & continued so up to the surrender of Memphis, in 1862, about June, I believe.

To 5th int. I do not know whether they did business or not.

To 6th int. I understood T. A. Nelson was pres'd't, & Ben. May cashier; I did not know the directors.

To 7th int. I suppose the same officers, Nelson & May.

To 1st X-int. I do not know, of my own knowledge, but heard Mr.

May speak of the matter; think from what he said that the officers
108 were required by the confederate authorities to remove their assets at or about the time of the evacuation of Memphis.

2d X-int. I do not know, as I was not here, and don't know that I knew a majority of the directors.

(Signed) W. H. CHERRY.

Sworn & subscribed before me this the 20th day of December, 1866, at Memphis.

(Signed) R. DUDLEY FRAYSER,
Commissioner.

And at J. J. Murphy's office appeared at the same time, C. P. MORRIS, known to me to be of lawful age, and being by me first duly sworn upon the Holy Evangelical to testify the truth, the whole truth in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid depose and say:

109 In answer to the first interrogatory, I do.

To 2d int. I do not know, from my own knoweldge, but am creditably informed, from sources which I cannot doubt, that such was the case.

To 3d int. I cannot state.

To 4th int. I cannot positively say, but think it was about the 1st of June these notes became a general currency in Memphis; at what time these notes ceased to be currency I cannot state.

To 5th int. I cannot say, *to* my own knowledge, anything that transpired regarding the bank or its assets after it left Memphis & the Federal lines.

To 6th int. Mr. Nelson was the president, & Mr. May, cashier.

To 7th int. Still remained the same; Mr. Nelson as president,
110 Mr. May, cashier.

To 1st X-int. I can state nothing on this subject of my own knowledge.

To 2d X-int. I cannot answer whether a majority of the directors of the bank were or were not in Memphis after the city was taken possession of by the U. S. authorities.

(Signed) C. P. NORRIS.

Sworn to & subscribed before me this 20th day of December, 1866, at Memphis.

(Signed) R. DUDLEY FRAYSER,
Commissioner.

The further taking of the deposition in this cause was adjourned till 9 o'clock, a. m., 21st December, 1866, to R. Dudley Frayser's office, there not being time to continue the taking of the same on the 20th Dec'r, 1866.

(Signed) R. DUDLEY FRAYSER,
Commissioner.

111 The commission was again opened on this 21st, and the taking of testimony in this cause resumed, in pursuance of the adjournment aforesaid, at R. Dudley Frayser's office.

(Signed) R. DUDLEY FRAYSER,
Commissioner.

BEN. MAY, known to me to be of lawful age, and being by me first duly sworn upon the Holy Evangelical to testify the truth, the whole truth in regard to the matters in controversy in the suit aforesaid, did then and there on his oath aforesaid, depose in answer:

To 1st int. I do.

To 2d int. On 28th or 29th of May, 1862, by order of the military authorities of the rebel government, the entire assets of the said bank, books & papers, were removed from Memphis. This was before the occupation of Memphis by the U. S. forces.

112 To 3d int. The assets were first taken to Grenada, Mississippi, about the 21st June, 1862, under order of Gen'l Ruggles. I removed the said assets to Montgomery, Alabama. Said Gen'l Ruggles commanded the confederate forces at that place.

To 4th int. Confederate treasury notes came into general circulation in Memphis about the 1st of November, 1861, and were received at par with bank notes of the Memphis banks from that time till the spring of 1862, when they became general, and so remained until the time I left Memphis with the assets of the bank, as stated in answer to 2d interrogatory.

To 5th int. I cannot say it was the Bank of West Tennessee that removed its assets, but that the assets were removed under military order by the president & cashier at the time before stated. The said
113 officers did not do a general banking business, but remained in charge of the assets, collecting some debts and looking after the interests of the institution.

To 6th int. T. A. Nelson was the pres'd't, I was cashier, and T. A. Nelson, F. Lane, J. M. Hill, D. H. Townsend, T. W. Hunt, H. Laird, R. S. Jones, C. B. Church, J. L. Taylor, John Kerr, W. A. Goodwyn, and J. Maples were directors, all elected in March, 1862, and were such officers until 1863, and of course both before & after the removal of the assets.

To 7th int. The pres'd't and the cashier of said Bank of West Tenn. were said T. A. Nelson & myself in the places south, where the assets were during the war, and until their return to Memphis. There were none of the directors with the assets while in the south except the president, T. A. Nelson.

To 1st X-int. by plaintiff. The assets of the Bank of West Tenn. were removed from Memphis further south in obedience to an
114 order of L. D. McKesick, civil governor and provost marshal of Memphis. I hereto attach a copy of the original order marked "Exhibit A," with its endorsement. The reason why I do not file the original is, that it is too valuable and important to place out of the control of the officers of the bank. The endorsement was procured to prevent my being taken from the charge of the assets and placed in the service. Some time in April, 1862, I had been directed verbally by said McKesick to hold the assets of the bank ready to be removed south at his further order, and the board of directors were informed of this. In consequence of this the bank refused to receive deposits from that date till the removal. At the same time Mr. McKesick stated that the order should be complied with. The confederate forces, then and at the time of the removal, occupied Memphis, & Mr. McKesick had, under his control, a strong provost guard. Under these circumstances and in
115 pursuance of said order the assets of the bank were removed as before stated.

To 2d X-int. of pl'ff. There was a majority of the directors of the

Bank of West Tenn. in Memphis after the place was taken possession of by the Federal forces, and a majority of them remained there.

Answer to 1st cross-int. by def't. I was with the assetts of the Bank of West Tennessee in the south beyond the Federal lines during all the time they were there, except for a few days at a time, when I may have been absent on special business, and two short visits in January, 1864, and March, 1865, to Memphis, by consent of the Federal authorities, obtained by the directors of the bank. Whenever I was absent from the assetts Mr. Nelson, the president, or an assistant, had charge of them.

To 2d X-int. by def't. I was not here, but the board met, or a majority, in Memphis—while the assets were gone south—held regular annual
meetings for election of directors & officers, as the assets were
116 not in Memphis. That was nearly all the business they could do.

But when I was here in January, 1864, at their order, I drew two drafts on the Citizens' Bank at New Orleans, the defendant, and at the same meeting they gave instructions concerning the care and preservation of the assets in the south. On March of each year, 1863, 1864, & 1865, there was in Memphis a meeting of the stockholders for election, as required by the charter, and officers were elected, and the directors so elected afterwards met, or a majority, & organized. At all meetings a majority of the board was present, or perhaps sometimes only a quorum, which was filed.

(Signed) BEN. MAY.

Sworn to & subscribed before me this the 21st day of Dec'r, 1866.

(Signed) R. DUDLEY FRAYSER,
Commissioner.

STATE OF TENNESSEE,
Memphis, Shelby County:

R. Dudley Frayser, a commissioner of the State of Louisiana,
117 duly appointed and commissioned by the executive authority thereof, to reside at Memphis and take the proof and execution of deeds &c., to be used or recorded in said State of Louisiana, do hereby certify that the forgoing deposition of J. J. Murphy, W. H. Cherry, C. P. Norris, & Ben. May, were taken before me on the 20th & 21st of December, between the hours, and at the places in the captions stated; that the examinations, responses, &c., of each of said deponents were reduced to writing, and by said deponents respectively sworn to & subscribed in my presence at the time & places aforesaid; that said deponents are residents of the city of Memphis, co. of Shelby, State of Tennessee.

In witness whereof I have hereunto set my hand & affixed my official seal this 21st day of Decemb'r, 1866, at Memphis, Tenn.

(Signed) R. DUDLEY FRAYSER,
Commissioner.

Copy of Exhibit "A," annexed to depositions.—Filed Feb'y 19th, 1867.

(Over.)

118 OFFICE CIVIL GOV. & PROV'ST MARSHALL,
Memphis, May 28th, 1862.

To the Pres'd't & Cash'r of the Bank of West Tenn:

By command of Gen'l Beauregard you are hereby ordered to remove

the assets of your bank forthwith from this city, to such place within the Confed' States as you may think best for the interests of the bank & the government. The affairs of the bank to continue under your control, until otherwise ordered. A car will be waiting at the corner of Jefferson & Main st's at 1 o'clock p. m. to receive the effects. This order is peremptory.

If you should think it necessary to change your location from one place to another after going south, transportation officers are requested to furnish you with necessary facilities for doing so.

Yours, &c.

(Signed) L. D. McKESICK,
Civil Gov. & Pro. Marshall.

119 (Endorsed:)

HEADQUARTERS OF THE FORCES,
Montgomery, Ala., July 31st, 1862.

The order of the provost marshall at Memphis is approved, and Mr. Ben. May will remain in charge of the effects of the Bank of West Tenn. 'till otherwise ordered by the commanding general.

By command of Maj. Gen'l Polk, second in command.

(Signed) W. B. RICHMOND,
Aid-de-Camp.

Order & continuance.—Extract from the minutes, Feb'y 19th, 1867.

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870

This case came on again this day—

Adams & Morse for pl'ffs; A. Pitot & E. A. Bradford for def'ts.

After hearing testimony and counsel, the hour for adjournment having arrived—

120 It is ordered that the further hearing of this case be continued until to-morrow.

Bill of Exceptions.—Filed Feb'y 20th, 1867.

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870

Be it known that, on the trial of this case, George A. Freret, witness for the said defendants, being on the stand, said defendants offered to prove by the said witness that, on the 10th Sept., 1863, the Union Bank of La., of which the witness was cashier, was called upon, in pursuance of General Order No. 202, to pay over to the officer designated by the said order all funds on deposit in the said Union Bank to the credit of various banks in the State of Tenn. and other persons referred to in said order; that the officer of the said Union Bank refused to comply with the said order, & that thereupon a military force took possession of the said
121 bank, and enforced a compliance with the order aforesaid. That all this occurred on the said 10th Sept., 1863, and that the Citizens' Bank was informed thereof, and with full knowledge of the facts aforesaid submitted to the requirements of the said General Order No. 202, and paid over the funds belonging to the plaintiffs herein.

That the counsel for the plaintiffs objected to the introduction of said proof on the ground that it was "resinter alios acta," and irrelevant to the present case.

That this exception was sustained by the court and the evidence rejected. Whereupon the defendants excepted to the ruling of the court and prayed that this their bill of exceptions be signed; which is done accordingly on this the 20th Feb'y, 1867.

(Signed) CHARLES LEAUMONT,
Judge.

Statement of C. W. Cammack.—Filed Feb'y 20th, 1867.

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

122 1st int. How much confederate currency was there in the Citizens' Bank at or about the time you left the bank and city in 1862?

Answer. Forty-seven thousand seven hundred dollars—so called.

Int. 2d. How much did you find in the bank on your return to the bank & city?

Answer. Forty thousand five hundred and fifty dollars—so called.

(Signed) C. W. CAMMACK.

Order & continuance.—Extracts from the minutes, Feb'y 20th, 1867.

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

This case came on again this day—

Adams & Moise for pl'ffs; A. Pitot & E. A. Bradford for def'ts.

After hearing argument of counsel, the hour of adjournment
123 having arrived, it is ordered that said case be continued till tomorrow for further argument.

Answer of C. W. Cammack to interrogatory propounded by pl'ff.—Filed Feb'y 21st, 1867.

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

Mr. C. W. CAMMACK:

How much confederate currency, in all, was paid over by the Citizens' Bank under military orders, and under what date?

(Signed) D. W. ADAMS,
Of Counsel for Pl'ff.

Paid upon the order of Maj. Gen'l Butler, on 13th June, 1862, in confederate money, two hundred & nineteen thousand ninety dollars ninety-four cents, ($219,090 94.) August 21st, 1863, paid upon order
124 Maj. Gen'l Banks, in confederate money, twelve thousand five hundred and nine $\frac{76}{100}$ dollars, ($12,509 76.) August 28th, do. do. one hundred & forty-two $\frac{52}{100}$ dolls. ($142 52.) Sept. 10, paid upon the order

of Maj. Gen'l Banks, in confederate money, ninety-two thousand seven hundred and twenty $\frac{35}{100}$ dollars, ($92,720 35. Having confederate money in our branch at Shreveport we borrowed from parties holding such currency a sufficient amount to pay the above.

(Signed) C. W. CAMMACK.

Order case submitted.—Extracts from minutes Feb'y 21st, 1867.

BANK OF WEST TENN. vs. CITIZENS' BANK OF LA. } No. 15870.

This case came on again for argument—Adams & Moies for pl'ffs.; A. Pitot & E. A. Bradford for def'ts.

After argument of counsel the case was submitted and the court took the same matter under advisement.

125 *Reasons for judgment.—Filed M'ch 27th, 1867.*

BANK OF WEST TENN. vs. CITIZENS' BANK OF LA. } No. 15870.

This is an action brought by plaintiff to recover of defendant the sum of $90,887 22.

The defense set up is that, to the knowledge and with the consent of plaintiff, the transactions carried on between them were in confederate money, and as such, null & void; and further, that the above sum claimed by plaintiff was, by General Order No. 202, paid to the Q. M. of the United States.

There is no discussion as to the amount due. It then becomes necessary for the court to fix the relation existing between the parties. From the evidence on file, it appears that, as far as the sum of $5,100 in Confederate States treasury notes is concerned, the relation existing between the parties was that of d'r & creditor, for plaintiff had de-
126 posited the above-named sum with defendant as deposits are usually made.

This contract may have been illegal, but the payment of that sum to the plaintiff by the defendant, relieves the court from the necessity of deciding that point.

For, if the contract be legal, then the defendant cannot ask to be relieved from the voluntary payment that he has made; and if illegal, but executed as in this case, the court will leave the parties where their illegal acts have placed them, granting relief neither to pl'ff nor to def't.

The other relation existing between pl'ff & def't in this case is that of agent and principal. The evidence shows that the claim of pl'ff is for drafts & notes which *is* sent to the defendant to be collected, with orders to place them to its (plaintiff's) credit. There is no evidence that the pl'ff ever gave instructions to the defendant to collect those notes & drafts in confederate money; on the contrary, the officers of the Bank of Tenn. most emphatically deny such a thing, and the officers of
127 The Citizens' B'k of La. admit that they never received any instructions to that effect, & never wrote to said plaintiff or asked anything about it, for they presumed that the plaintiff was aware that its drafts & notes would be collected in confederate money, and their

presumption is based upon the fact that, in certain particular cases or transactions, the pl'ff made a distinction between gold & currency. Those particular transactions mean nothing; they allow no legal logical in*fluence* to be drawn from them to general facts; they stand or fall by their own merits—by their own special peculiar inherent facts that gave rise to them; but in no case can the court construe the simple word "currency" to mean confederate money, unless there be special proof that by the word currency the parties meant confederate money, & understood that it should be confederate money.

On the supposition that there was proof in this record that the
128 pl'ff had authorized the def't to collect its drafts & notes in currency, is it not a matter of history that there was, at the time of the collection of such notes, city currency, state currency, individual currency, & currency of incorporated institutions, and why should the defendant insist that it meant confederate money in default of any instructions from its principal. The word currency, unless there be a special agreement to the contrary between the parties, must be understood in its legal sense; now currency in law means a legal circulating medium, & confederate money never was currency in law, though it may have been so in fact, for the law cannot admit a fact whose existence is illegal, except for the purposes of a criminal prosecution, or for an action of damages. Why did not the defendant in this case, on the supposition that it had received orders to collect its drafts & notes in currency, collect them in those other currencies whose legal existence is not questioned? The court cannot say; the record is blank on that point.

129 Therefore, the case, as it now stands, can be reduced to this simple proposition. Can an agent who has collected, without any instruction from his principal, confederate money, in payment of debts due to his principal, allege his own illegal act as a defense to an action brought by the principal against him for the recovery of the sums this improperly collected, or compel him to accept confederate notes in payment? There cannot be a difference of opinion on the answer to be given to such a question. It must inevitably be answered in the negative. The next question involved is, whether the payment made under General Order 202 can absolve the bank from all liability? In order to decide that question it is necessary to examine the evidence of this case, for this question involves a question of fact, and a question of law. The question of law is, whether the above order was legally issued or had any legal force; the question of fact is, whether by the payment
130 of that sum of $90,887 22, in confederate money, to the United States, the defendant paid what it owed to the plaintiff, and paid that claim of the plaintiff which the above order intended to confiscate *it*; for there can be no doubt in the mind of any one that if the defendant did not pay what it owed to the plaintiff, which was that which the order meant to confiscate, that order cannot protect him. In order to be better understood, the court will suppose the case that the above order had been made to cover some specified articles of solid silver ware belonging to the pl'ff, and that the def't, in nominal obedience to the above order, had given or surrendered a like kind of specified silver-plated ware. There can be no doubt that in an action by the plaintiff to recover the solid silver ware the nominal obedience to the above order would not protect the defendant. Again, on the supposition that the Government should wish to remit the confiscation of those funds
131 in what was due to the plaintiff in this case was confederate money (which is not the case) he would only in equity and in law

be entitled to what that above amount of confederate money would have brought of good money; it might have only been four or five thousand dollars; whereas, if it was good money that was due to him, he would be entitled to recover the whole amount of ninety thousand eight hundred and eighty seven & $\frac{22}{100}$ ($90,887 22.) It is therefore evident that to the defendant the decision of this question is most important, & he has a capital interest in urging it for the consideration of the court. Therefore, admitting the legality *of* binding force of order No. 202, it becomes necessary for the court to determine what was that which was due to plaintiff in this case. It is evident from what the court has already said that it was not confederate money which was due to plaintiff, & therefore, by paying confederate money, under that above order, the defendant cannot be liberated; it did not pay what it
132 owed to the plaintiff, & only nominally complied with the order.

Again, if it could not have liberated itself towards the plaintiff by tendering him or paying confederate money, how can it have liberated itself by paying it to the Q. M.? But, admitting, for the sake of argument, the validity of the confederate issue, and viewing it as legal currency, the evidence discloses the fact that there was no separate account kept of the funds which the def't had collected for pl'ff in this case; it used it as its own money. Now, on the arrival of our forces in May, 186?, the Citizens' Bank of Louisiana had in its vaults about $2,000,000 of confederate notes. They were then worth nearly their full value; some of it belonged to the Confederate States, & was disposed of by Gen'l Butler, but on the 10th Sept., 1863, the date of that order, No. 202, the bank only had in its vaults about forty thousand dollars ($40,000) of confederate notes; they went & borrowed, in confederate money, a sufficient amount to enable it to pay not only the balance
133 due to the pl'ff in this case, but all the amounts that were due to the persons & corporations included in the above order. Now, confederate money, at the date of that order, 10th Sept., 1863, was worthless, or of very little value. What is the court to conclude that the bank did with that large sum of money, which is shown to have been disposed of? Evidently that it employed it to the best interest of the creditors, and in such a case the pl'ff should be entitled at least to a proportion in the amount that the sum due him would bear to the amount employed by the bank to the best advantage of its creditors.

Wherefore it is ordered that plaintiff do recover of defendant ninety thousand eight hundred and eighty-seven & $\frac{22}{100}$ dollars, ($90,887 22,) as prayed for, and costs of court.

Judgment.—Filed March 27th, 1867.

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

134 In this case, after the deliberation, and for the reasons assigned in the written opinion of the court, this day filed, and the court considering the law & evidence to be in favor of plaintiff's demand:

It is ordered, adjudged, & decreed, that plaintiffs, the pres'd't, directors, & comp'y of the Bank of West Tenn., a bank duly incorporated & chartered by the laws of the State of Tenn., & domiciliated & doing business in the city of Memphis, State of Tenn., recover of defendants, Citizens' Bank of Louisiana, a banking corporation duly incorporated

by the legislature of the State of La., domiciliated and doing business in the city of New Orleans, in the State of La., the sum of ninety-thousand eight hundred & eighty-seven $\frac{22}{100}$ dollars, with five per centum per annum interest thereon, from the 10th Sept. 1863, & all costs of suit.

Judgment rendered March 27th, 1867.

Signed 13th April, 1867.

(Signed) CHARLES LEAUMONT, *Judge.*

135 *Rule for new trial.—Filed 28th M'ch*, 1867.

BANK OF WEST TENN. *vs.* CITIZENS' BANK OF LA. } No. 15870.

To the hon. the 5th district court of New Orleans.

On motion of A. Pitot, esq'r, of counsel for defendant, it is ordered by the court that plaintiffs show *on* cause on the 11th day of April, 1867, why a new trial should not be granted on the grounds filed.

Grounds for a new trial.—The judgment is contrary to law & the evidence.

First, it is stated in the reasons for judgment, that there is no evidence that the word currency meant confederate treasury notes, at the time of the transactions between the two corporations, nor that the plaintiffs ever authorized the defendants to receive confederate money for them, or were informed that such was the fact. It is expressly stated by all the witnesses that, during the time of the above transac-

136 tions, the only money in use, & no other, here & in Memphis, was confederate money; that word currency was used to mean the then existing currency, to wit, confederate notes. It is shown by the letters of the Bank of West Tenn., that they, from time sent to the Citizens' Bank confederate notes to be deposited to their credit to meet their checks & bills; that the Citizens' Bank sent them monthly balances showing the use of the moneys received from them, & collected for them; that they were informed of the nature of the currency in the hands of the Citizens' Bank, & in the letter of , on file in court, the acknowledged receipt of $200,000 in Confederate notes sent them by defendants, and requested the Citizens' Bank to retain the balance of that fund to meet their checks drawn on same, which checks on themselves were drawn, payable in Confederate State notes, as shown by said documents on file.

2d. It is further stated in the judgment that, admitting for the

137 sake of argument, that the military order was obligatory on defendants, they did not pay to the United States the same kind of money they owed to pl'ffs. It is proved, on the contrary, that the amount paid was nearly the balance in confederate money, which the Citizens' Bank had offered to remit to the Bank of West Tenn., and which they requested the Citizens' Bank to keep for them.

It is shown by the receipt of the military officer that the Citizens' Bank paid him confederate money, & the United States having received it as belonging to the pl'ffs, this court has no power to set aside or disregard the decision of the military authority.

The military authority being at the time of payment the ruling power of the land, all proceedings are stopped as soon as the order to pay is

produced. In said order the reservation is made by the military authorities for redress at their hands, to parties injured, & therefore no action lies against the bank which *have* obeyed the order.

138 3d. Defendants further assert that, it being in evidence that the balance remaining to the credit of pl'ffs *were* in confederate notes, as appears by the letter of the Citizens' Bank, offering to send them said balance by express, as they had already sent them $200,000 of the same funds, & that said balance was ordered by the Bank of West Tenn. to be kept for their use, in order to pay checks already drawn against it, the said Bank of West Tenn. has no right of action, according to the decision of the Supreme Court in the case of Schmidt vs. Barker.

(Signed) ARMAND PITOT, *Att'y.*

Sheriff's return.

Received March 30th, 1867, and on the 1st day of April, 1867, served a copy of the within rules on plaintiffs, through Mr. Adams, of the firm of Hays, Adams & Moise, attorneys for plaintiffs, personally. Returned same day.

(Signed) F. B. HERNANDEZ,
Dep. Sheriff.

139 *Rule to show cause.—Filed April 11th, 1867.*

BANK WEST TENN. vs. CITIZENS' B'K OF LA. } No. 15870.

In the hon. the 5th district court of New Orleans.

On motion of A. Pitot, of counsel for defendants, it is ordered that plaintiffs do show cause instanter why all proceedings should not be arrested herein, & the suit dismissed for the following reasons: that the acts done by defendants *was* in obedience to orders issued under martial law by the commanding general; & according to act of Congress No. 70, approved March 2d, 1867, this court is without jurisdiction, & cannot reverse the acts done as aforesaid.

Service accepted.

(Signed) ADAMS & MOISE,
Pl'ffs' Att'ys.

Order.—Rule dismissed, April 11th, 1867.

BANK OF WEST TENN. vs. CITIZENS' BANK OF LA. } No. 15870.

140 On motion of A. Pitot, of counsel for defendants, it is ordered that plaintiffs do show cause instanter, &c.

The rule taken in this case by defendants on pl'ffs, to show cause why the new trial thereof should not be granted, fixed for this day, was submitted to the court for determination, & the court, considering the law in favor of defendants in rule, it is ordered that said rule be dismissed & the new trial refused.

Motion of appeal.—Filed 15th April, 1867.

Fifth district court.

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

On motion of A. Pitot, of counsel for def'ts, and upon informing the court that they believe themselves aggrieved by the judgment rendered against them in this case, it is ordered that an appeal be
141 allowed def'ts, returnable on the fourth Monday of May, 1867, upon said def'ts furnishing bond in the sum of one hundred & fifty thousand dollars in favor of pl'ffs, with good and solvent security; and that pl'ffs, through their attorneys, Hays, Adams & Moïse, be notified of this motion.

Bond of appeal.—Filed 15th April, 1867.

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

Know all men by these presents that we, the Citizens Bank of Louisiana, as principal, & Jno. G. Gaines and Antoine Carriere, as security, in solido, are held and firmly bound unto the pres'd't, directors, & company of the Bank of West Tennessee, their executors, administrators, & assigns, in the sum of one hundred & fifty thousand dollars; for the payment whereof, we bind ourselves, our heirs, executors, & administrators, firmly by these presents, sealed with our seals, and dated in
142 the city of New Orleans, on the 5th day of April, in the year of our Lord one thousand eight hundred & sixty-seven.

Whereas the above-bounden Citizens' Bank of La. here made a motion this day for an appeal from a final judgment rendered against them in suit of the pres'd't, directors, & comp'y of the Bank of West Tenn., in the fifth district court of New Orleans, on the 27th day of March, 1867, and signed on the 13th April, 1867:

Now, the condition of the above obligation is such, that the above-bound Citizens' Bank of La. shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal, otherwise that the said Jno. G. Gaines & A. Carriere, their sureties, shall be liable in their place.

(Signed) J. G. GAINES, [L. S.]
Pres'd't.
(Signed) A. CARRIERE. [L. S.]
(Signed) J. G. GAINES.

Signed, sealed, and delivered in presence of—
Witness: J. L. DELERY.

143 *Citation.—Filed April 25th, 1867.*

STATE OF LOUISIANA,
5 District Court of New O'l's:

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

To Mr. Pres'd't, directors & co. of the Bank of West Tennessee, greeting:

Whereas Citizens' Bank of La. has, on the 18th day of April, filed in the office of the clerk of the 5th dist. court of New Orleans, a petition of appeal from a certain final judgment rendered in the said court against them, which appeal is returnable to the supreme court for the State aforesaid, on the 4th Monday in May, 1867, you are therefore hereby cited to appear in person or by attorney in the said court on the day last aforesaid, to answer the said appeal.

Witness the Hon. Cha's Leaumont, judge of the court afore-
144 said, this 20th day of April, in the year of our Lord one thousand eight hundred and sixty-seven.

(Signed) A. D. BERNOUDY,
D'y Clerk.

Sheriff's return.

Received April 20th, 1867, and on the 23d day of the same month & year, served a copy of the within citation of appeal and accompanying petition on plaintiffs herein, through Mr. Adams, att'y, of the firm of Hays, Adams & Moise, att'ys for said plaintiffs, personally, who accept service of the same.

(Signed) F. B. HERNANDEZ,
D'y Sheriff.

Sh'ff's fees, 1 00.

Supreme court of La.

Filed April 25th, 1867.
(Signed) C. M. DELERY,
D'y Clerk.

145 *Agreement.—Filed April 24th 1867.*

BANK OF WEST TENN.
vs.
CITIZENS' BANK OF LA. } No. 15870.

It is agreed between the undersigned that military orders need not be copied in the record of appeal, & may be quoted in the Supreme Court as matters of public notoriety, & forming part of the history of the country.

(Signed) ADAMS & MOISE,
Att'ys for Appelle's.

(Signed) ARMAND PITOT,
Att'y for Appellant.

Certificate.

STATE OF LOUISIANA,
Fifth District Court of New Orleans:

I, Louis Power, clerk of the fifth district court of New Orleans, and as such duly commissioned and sworn, do hereby certify that the
146 above & foregoing pages do contain a true & correct transcript of all the documents filed, testimony & evidence adduced, and all the proceedings had upon the trial of the suit wherein The President, Directors, & Company of the Bank of West Tennessee are plaintiffs, & The Citizens' Bank of Louisiana are defendants, the same being numbered No. 15870 of the docket of said court, and on record in my office.

In testimony whereof I have hereunto set my hand & affixed the impress of the seal of said court, at the city of New Orleans this 10th day of May, in the year of our Lord one thousand eight hundred & sixty-seven, and in the ninety-first year of the independence of the United States of America.

[L. S.] (Signed) LEWIS POWER,
Clerk.

147 Supreme court of the State of Louisiana.

Order and continuance.—Extract from minutes, Tuesday, November 17th, 1868.

The court was duly opened. Present, their honors James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

PRESIDENT, DIRECTORS, & CO. OF BANK West Tennessee
vs.
CITIZENS' BANK OF LA. } No. 1410

Continued with preference.

Case submitted.—Extract from minutes, Tuesday, December 8th, 1868.

The court was duly opened. Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

148 PRESIDENT, DIRECTORS, & CO. OF BANK West Tennsssee.
vs.
CITIZENS' BANK OF LA. } No. 1410.

Called for trial. Arnged by Harry T. Hays, esq., of counsel for pl'ff & appellee, and A. Pitot, esq., and T. J. Semmes, esq., of counsel for def't & appellant, and taken by the court under advisement on the briefs on file for both parties.

Opinion.—Filed December 14th, 1869.

PRESIDENT, DIRECTORS, & CO. OF BANK West Tennsssee
vs.
CITIZENS' BANK OF LA. } No. 1410.

Appeal from the 5th district court of New Orleans.

Mr. Justice WYLY:

Plaintiff has instituted this action against the defendant to recover a large cash balance for deposits and collections by the defendant, The Citizens' Bank of La., for and on account of plaintiff, The Bank of West Tennessee, during the year 1862.

Defendant sets up in answer that the transactions between the parties were in C. S. treasury notes, and that, on the 10th Sept., 1863,
149 the amount claimed by plaintiff was paid over to the U. S. quartermaster, in obedience to General Order No. 202.

On the trial in the district court there was judgment in favor of plaintiff for $90,887 22, with 5 % interest thereon, from 10th September, 1863, and costs. Defendant has appealed.

In the investigation of this case, the first important question presented is, Were the transactions between the pl'ff & def't based upon confederate treasury notes?

Plaintiff has filed in this suit the account current of defendant, extending from 17th March, 1862, to Sept. 11th, 1863. Plaintiff's witnesses state that this account current is correct, and that it was sent to plaintiff by the defendant, under cover of a letter dated May 2nd, 1865, which is also filed. There are several entries in this account of confederate treasury notes. We have observed a very large debit of $200,000 00 entered in that account on 26th May, 1862.

Plaintiff's action seems to be based upon that account to recover the balance due thereon.

It is true that the record discloses no positive proof that de-
150 fendant was instructed to collect the drafts in C. S. treasury notes, but a careful examination of the record satisfies us that plaintiff knew that his transactions with defendant were on a basis of confederate notes.

This large entry of $200,000 00 in the account is explained by the correspondence of Mr. Rousseau, the cashier of the Citizens' Bank, with Mr. May, the cashier of the Bank of West Tennessee.

On 20th May, 1862, Mr. Rousseau wrote: "As you have in our hands a large amount of currency deposits, without being able to bring it back, we think it more prudent on both sides to send you by the bearer, L. E. Simonds, esq., a large portion of said funds. The balance may be sent to you in the same manner, if you desire it, on which please instruct us by return of Mr. S."

On 24th May, 1862, Mr. May, the cashier of Bank of West Tennessee, replied: "I have received your favor of 20th per Mr. L. E. Simonds, together with $200,000 00, tr. notes, placed to cr. your ac. I
151 have a good many checks out, which may pass through the lines, or may be held, should I not be able to take them up here. I have not charged you with any of my collections for some time. Do not send me the balance. Our paper past due you will hold, as I fear to take the risk of transmission."

By this correspondence it appears that there could have been no misunderstanding between the parties as to what was meant by the expression of "currency deposits," because, on 24th May, 1862, the pl'ff was in possession of the letter of def't stating "You have in our hands a large am't of currency deposits. We think it more prudent on both sides to send you, by Mr. Simonds, a large portion of said funds." Pl'ff received without objection, from Mr. Simonds, the $200,000 00 C. S. notes, knowing that they were a "large portion of said funds."

What does the expression in pl'ff's letter, "do not send the balance," mean? "I have received your favor of 20th, per Mr. L. E. Simonds, together with $200,000 00, tr. notes." "Do not send
152 the balance." The balance evidently meant the am't of tr. notes remaining in the hands of def't.

Why did pl'ff wish def't to hold the balance? Because there were checks out drawn against this currency deposit, which might pass through the lines. Pl'ffs had frequently sent packages of C. S. notes, as well as de'fts for collection, to def't. On 1st Feb'y, 1862, Mr. May, the cashier of Bank of West Tennessee, wrote to Mr. Rousseau, cashier of the Citizens' Bank: "Our president, T. O. Nelson, esq'r, leaves for your city to-morrow, & will be there several days. By him I send a deposit of treasury notes, $100,000 00." Against these deposits pl'ff drew various dr'fts, payable in currency.

When def'ts became uneasy, & desiring to release themselves from so much responsibility, they sent $200,000 00, treasury notes to pl'ff, & offered to send them the balance; but pl'ff instructed them to hold on to the balance, to meet some checks that they had drawn against these funds, which might pass the lines. On the 10 March, 1862, pl'ff
153 sent to def't, for collection, a check on the Union Bank for $58,-416 19, payable in confederate notes.

It appears that all the deposits & collections were kept in the same ac., & from the correspondence of pl'ff we infer that monthly ac's had been rendered by def't to them. When pl'ff sent the coupons of confederate bonds to def't for collection, he wrote: "As this interest is payable in coin, you will so oblige me as to collect & send me the coin by express."

From a careful examination of the evidence, we are satisfied that the collections made by the def't for the pl'ff were in confederate notes, & that pl'ff was aware thereof; that this action is based upon transactions in confederate treasury notes.

Under the constitution of 1868 the courts of this State cannot entertain an action based upon transactions in confederate treasury notes.

We think the evidence discloses that this case is founded upon dealings in an unlawful currency, and this court has often refused to lend its aid to transactions reprobated by law.

154 It is therefore ordered, adjudged, and decreed that the judg't of the court below be avoided and annulled; & it is now ordered that there be judg't in favor of def't, dismissing this action at pl'ff's costs in both courts.

Decree.—Extract from the minutes, Monday, December 14th, 1868.

The court was duly opened. Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

PRESIDENT, DIRECTORS, & CO. OF BANK WEST Tennessee *vs.* CITIZENS' BANK OF LA. } No. 1410.

On appeal from the fifth district court of New Orleans.

Judgment delivered by Justice Wyly.

It is ordered, adjudged, and decreed that the judg't of the court below be avoided and annulled, and it is now ordered that there be judg-
155 ment in favor of defendant, dismissing this action at plaintiff's costs in both courts.

Motion for extension to file briefs.—Extract from the minutes, Monday, December 28th, 1868.

The court was duly opened. Present, their honors, James G. Taliafero, Rufus K. Howell, William W. Howe, associate justices; absent, John T. Ludeling, chief justice, and W. G. Wyly, associate justice.

PRESIDENT, DIRECTORS, & CO. OF BANK WEST Tennessee *vs.* CITIZENS' BANK OF LA. } No. 1410.

On motion of Hays & New, of counsel for plaintiffs & appellees, submitting hereupon a petition for a rehearing in this case—

It is ordered by the courts that time for filing briefs in support of the said petition be allowed and extended to the eleventh day of January, 1869.

156 *Petition for rehearing.—Filed Dec'r 28th, 1868.—Rehearing refused.—Extract from minutes, Monday, January 25th, 1869.*

The court was duly opened pursuant to adjournment. Present, their honors John T. Ludeling, chief justice, and Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices; absent, James Taliaferro, associate justice.

His honor the chief justice pronounced the judgment and decree of the court in the following case:

PRESIDENT, DIRECTORS, & CO. OF BANK WEST Tennessee *vs.* CITIZENS' BANK OF LA. } No. 1410.

It is ordered that the rehearing applied for in this case be refused.

Petition for writ of error.

PRESIDENT, DIRECTORS, & CO. OF BANK WEST Tennessee *vs.* CITIZENS' BANK OF LA. } No. 1410.

157 To the Hon. J. P. Bradley, judge of the Supreme Court of the United States:

The petition of The President and Directors of the Bank of West

Tennessee, a corporation duly established by the law of Tennessee, respectfully shows:

That, in the case of your petitioner against the Citizens' Bank of Louisiana, No. 1410 of the docket of the supreme court of Louisiana, there was a final decree in said case rendered by said supreme court of Louisiana, which constitutes the highest court of law and equity in the State of Louisiana in which a decision in the said suit could be had.

That in said final judgment there was drawn in question the validity of an authority exercised under the State of Louisiana, viz: the validity of article 127 of the constitution of the State of Louisiana, which is in the following words: "That all agreements, the consideration of which was confederate money, notes, or bonds, are null and void; and shall not be enforced by the laws of this State," on the ground of said article
158 being repugnant to the Constituion of the United States; and the decisions of the supreme court of Louisiana in said case was in favor of the validity of the article of the constitution of Louisiana, and the constitutionality thereof, and disallows the right set up under the Constitution of the United States.

Petitioner shows that he desires to take a writ of error to the Supreme Court of the United States.

Wherefore he prays you to grant him a writ of error returnable to the Supreme Court of the United States, on the first Monday in December next, on giving bond with security in such sum as your honor may fix and that your honor may grant such other orders as the nature of the case may require.

(Signed) HAYS & NEW and
(Signed) RANDOLPH, SINGLETON & BROWNE,
Att'ys.

Order.

Let a writ of error from the judgment rendered by the supreme court of Louisiana, in the aforesaid case of The President, Directors &c.
159 of the Bank of West Tennessee vs. The Citizens' Bank of Louisiana, number fourteen hundred and ten (1410) of the docket thereof, to the Supreme Court of the United States, be granted, on petitioners and plaintiffs in error giving bond and sufficient security in the sum of dollars, conditioned as the law directs, returnable in the said Supreme Court on the first Monday of Dec'r next, and that The Citizens' Bank of Louisiana, the defendant in error, be cited to answer said writ of error.

(Signed) JOS. B. BRADLEY,
Asso. Just. Sup. C't U. S.

Supreme court of La.

Filed June 13th, 1870.
(Signed) M. B. JULIAN,
Dep'y Clerk.

Bond for writ of error.—Filed June 13th, 1870.

Know all men by these presents that we, The President and Directors of the Bank of West Tennessee as principal, J. M. Berry as surety, are held and firmly bound unto The Citizens' Bank of Louisiana in the

full and just sum of one thousand dollars, to be paid to the said Citizens' Bank of Louisiana, certain attorney, executors, administators, or
160 assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 7th day of June, in the year of our Lord one thousand eight hundred & seventy.

Whereas lately at the supreme court of Louisiana, in a suit depending in said supreme court, wherein Bank of West Tennessee is plaintiff, and Citizens' Bank of Louisiana is defendant, judgment was rendered against the said plaintiff, and the said plaintiff having obtained a writ of error, and filed a copy thereof in the clerk's office of the said Supreme Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington City, the 1st Monday of December next:

Now, the condition of the above obligation is such, that if the said plaintiff in error shall prosecute his writ to effect and answer all damages and costs if he fail to make his plea good, then the above ob-
161 ligation to be void; else to *to* remain in full force.

(Signed)
President & Directors of the Bank of West Tennessee.
pp. HAYS & NEW, *Att'ys.*
(Signed) J. M. BERRY,

Approved June 9th, 1870.
(Signed) JOS. P. BRADLEY,
Asso. Just. Sup. C't U. S.

Affidavit.

Personally before me, the undersigned authority, James M. Berry whose signature is affixed to the foregoing bond and surety, and being sworn, says he is worth the sum of one thousand dollars over and above all his debts and liabilities.

(Signed) J. M. BERRY.

NEW ORLEANS, *June 7th*, 1870.

Sworn and subscribed before me to-day.
[SEAL.] (Signed) A. SHELLEY,
2d Justice Peace.

Citation.

PRESIDENT, DIRECTORS, & CO. OF BANK West Tennessee
vs
CITIZEN'S BANK OF LA. } No. 1410.

UNITED STATES OF AMERICA, *ss:*

162 To the Citizen's Bank of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, wherein The

President, Directors, & Co. of the Bank of West Tennessee are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgement in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this ninth day of , in the year of our Lord, one thousand eight hundred and seventy.

(Signed) JOSEPH P. BRADLEY,
Asso. Just. Sup. Ct U. S.

A true copy:
[SEAL.] (Signed) M. P. JULIAN,
Dep'y Clerk Sup. Court.

163 *Sheriff's return.—Filed August 18th*, 1870.

Received August 8th, 1870, and on the same day, month, and year I served a copy of the within citation and order on the Citizen' Bank of Louisiana by a personal service on John G. Gaines, president of said bank. Retu'd same day.

(Signed) H. E. GARDETTE, *D'y Sheriff.*

Affidavit annexed to said return.

Mr. Gardette, dep'y sheriff, being duly sworn, deposes that all the facts of his return are true & correct.

(Signed) H. E. GARDETTE, *D'y Sh'ff.*

Sworn to and subscribed before me this the 18th of August, 1870.
[SEAL.] (Signed) T. McC. HYMAN,
Dep'y Clerk Sup. Court.

164 UNITED STATES OF AMERICA,
State of Louisiana:

The President of the United States of America to the Citizens' Bank of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, wherein The President, Directors, and Co. of the Bank of West Tennessee are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Salmon P. Chase, Chief Justice of said Supreme Court of the United States, this ninth day of June, in the year of our Lord one thousand eight hundred and seventy.

(Signed) JOSEPH P. BRADLEY,
Asso. Just. Sup. Court U. S.

A true copy:
[SEAL.] M. P. JULIAN,
Dep'y Clerk Sup. Court.

(Indorsed:)

5th dist. court, No. 15870.

For return.

Received August 8th, 1870, and on the same day, month, and year I served a copy of the within citation and order on the Citizen' Bank of Louisiana by a personal service on John G. Gaines, president of said bank. Retu'd same day.

H. E. GARDETTE,
D'y Sheriff.

Filed August 18th, 1870.

T. McC. HYMAN, *D'y Clk.*

Mr. Gardette, dep'y sheriff, being duly sworn, deposes that all the facts of his return are true and correct.

H. E. GARDETTE,
Dep'y Sh'ff.

Sworn to and subscribed before me this the 18th of August, 1870.
[SEAL.]

T. McC. HYMAN,
Dep'y Clerk Sup. Court.

Clerk's certificate.

UNITED STATES OF AMERICA,
Supreme Court E. D., State of Louisiana:

I, M. Pierre Julian, deputy clerk of the supreme court of the State of Louisiana for the eastern district, do hereby certify that the foregoing one hundred and sixty-four (164) pages contain a true copy
165 of the transcript of the proceedings had in the fifth district court of New Orleans in a certain suit wherein The President, Directors, and Co. of Bank West Tennessee was plaintiff, and The Citizens' Bank of Louisiana was defendant, and also of the proceedings, (except the petition for rehearing filed December 28th, 1868, which, although diligently sought for, in this office, cannot be found,) had in this supreme court on the appeal taken by said Citizens' Bank of Lonisiana; which appeal is now on the files thereof under No. 1410.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans, this nineteenth day August, A. D. 1870, and in the ninety-fifth year of the independence of the United States of America.

[SEAL.]

M. P. JULIAN,
Deputy Clerk.

(Indorsement on cover:) No. 398. The President and Directors of the Bank of West Tennessee, plaintiff in error, vs. The Citizens' Bank of Louisiana. Louisiana sup. court. Filed 13th December, 1870.

REC. 398—5

Supreme Court of the United States.

No. 190.

THE PRESIDENT AND DIRECTORS OF THE BANK OF WEST TENNESSEE.

Plaint. in Error.

vs.

THE CITIZENS' BANK OF LOUISIANA.

Grounds for Motion to Dismiss Writ of Error.

This is a writ of error to the supreme court of the state of Louisiana, under the 25th section of the judiciary act of 1789.

In the very recent case of Cousin *v.* Générès the court held that the decision in the case of Bethel *v.* Demaret governed that case, and that the writ of error must therefore be dismissed.

It is therefore only necessary to show very briefly the perfect identity of the present case with those two cases, to warrant the same result.

In the case of Cousin *v.* Générès, the supreme court of the state gave its decision in these words (21 L. Ann. Rep., 705):

"The evidence in this case satisfies us that the plaintiff delivered to the defendant's firm a sum of Confederate money to be invested, and the latter invested it, with the exception

of a small portion, rendered in court, in bonds of the city of New Orleans, payable in the same currency.

"Under such circumstances we are of opinion that the court *a qua* properly rejected the demand of the plaintiff. (Hunley *v.* Scott, 19 Ann., 161; King *v.* Huston, 19 Ann., 288; McCracken *v.* Poole, 19 Ann., 359; Norton *v.* Dawson, 19 Ann., 464.)

"The plaintiff appellant has filed in this court an assignment of errors in which he alleges that the proceedings and judgment of the lower court are manifestly erroneous in this, that the 127th article of the constitution of 1868 is repugnant to article 1, section 10, of the constitution of the United States, which forbids the passage by a state of a law impairing the obligation of contracts. We presume this assignment was made through inadvertence. The judgment appealed from was rendered in July, 1867, before the constitution of 1868 was framed, and long before it was adopted."

In this present case of the two banks the judgment of the district court (p. 45 of the record) was rendered on the 27th of March, 1867. It was therefore but naturally to be expected that the decision of the supreme court, which in both cases was adverse to the validity of contracts in Confederate money, would again be based upon its current of decisions, independently of any statute, or of the constitution of 1868.

The grounds for or against the jurisdiction of the supreme court of the United States in the present case must be found in the decision of the state court to which the writ of error was taken.

The parts of that decision, bearing upon this question, are the following (p. 51 of the record):

"Plaintiff has instituted this action against the defendant to recover a large cash balance for collections and deposits by the defendant, the Citizens' Bank of Louisiana, for and on account of the plaintiff, the Bank of West Tennessee, during the year 1862."

(P. 52.) "From a careful examination of the evidence, we are satisfied that the collections made by the defendant for the plaintiff were in Confederate notes, and that plaintiff was aware thereof; that this action is based upon transactions in Confederate treasury notes."

"Under the constitution of 1868, the courts of this state cannot entertain an action based upon transactions in Confederate treasury notes."

"We think the evidence discloses that this case is founded upon dealings in an unlawful currency, and this court has often refused to lend its aid to transactions reprobated by law." And the suit was dismissed.

This language of the court leaves no doubt that its decision was based upon its own firmly established jurisprudence, independently of any statute, and that therefore, as this court said in Bethel *v.* Demaret (10 Wall., 537): "No Federal question appears in the record, and the motion to dismiss must be granted." The mention of the constitution of 1868 in a narrative form is not alleged as the ground of the decision, but is only an expression of the gratification of the court at the popular sanction of its course.

We know besides this, through the case of Cousin *v.* Générès, that the supreme court of Louisiana does not apply the 127th article of the constitution of 1868 to judgments rendered before its adoption.

The circumstances which give jurisdiction to this court under the 25th section of the judiciary act must appear clearly, and with certainty in the record, and not be left to vacillating inference.

Respectfully submitted,

LOUIS & EDWARD JANIN,
Of Counsel for defdts. in error.

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1871.

BANK OF WEST TENNESSEE,
PLAINTIFF IN ERROR,
vs.
THE CITIZENS' BANK OF LOUISIANA. } *No.* 190.

Motion to dismiss writ of error for want of jurisdiction.

BRIEF OF COUNSEL OF PLAINTIFF IN ERROR.

This case is removed, for alleged error, from the supreme court of the State of Louisiana, where it was decided on the 14th December, 1869.

Rec., p. 51.

The plaintiff in error brought suit in the fifth district court of New Orleans for the sum of $93,380.97, for money deposited by plaintiff with defendant and collected by the latter for the former.

See Rec., p. 2.

To this the defendants answered that in 1862, they, the plaintiffs, were in the habit of sending notes and drafts to them, the defendants, for collection, and drawing checks for cash balances, and that plaintiffs also remitted to them packages of Confederate States treasury notes to pay their (plaintiffs') checks, and that all of said collections and payments were in Confederate money. That on the 20th May, 1862, the balance to the credit of plaintiffs was $290,887, when they remitted plaintiffs $200,000; and

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that the remainder was taken from them by a military order of General Banks on the 14th September, 1863.

See Rec., pp. 3 and 4.

The fifth district court of New Orleans gave judgment for plaintiff.

See Rec., pp. 45 and 46.

From which the defendants appealed to the supreme court of Louisiana, where the judgment of the court of the first instance was reversed, and plaintiffs' petition dismissed.

See Rec., pp. 51 and 52.

And from that judgment a writ of error has been allowed to this court.

POINTS.

First. Money deposited with a bank is a loan for use, which imposes upon the bank an obligation to pay the amount in such currency as may be in use at the time payment is demanded.

La. Code, art. 2884.

Sims *vs.* Bean, 10 La. Annual, 347.

Story on Bailments, § 88, p. 65, Boston edition, 1840.

Pott *vs.* Clegg, 16 Meeson & Welsby, pp. 327 and 328—end.

Second. When a deposit is made in bank, and credited as cash, as in this case, the bank becomes the debtor of the depositor, and is liable to an action for balance of account, no matter what the deposit may have consisted of.

U. S. Bank *vs.* Bank of Georgia, 10 Wheaton, 333, 346.

Commercial Bank *vs.* Hughes, 17 Wendell, p. 100.

Third. Not only were the deposits in this case credited as cash, but the Confederate notes were money.

They were issued under the authority of a military power at war with the United States, and having supreme military control of a large territorial surface.

See act of the Confederate Congress of August 19, 1861, sec. 1, p. 20.

Thorrington *vs.* Smith, 8 Wallace, p. 11.

On the 17th September, 1861, Thomas O. Moore, Governor of Louisiana, issued his proclamation calling on the banks of the State to suspend specie payments, and to receive and pay out Confederate notes, which order, as by previous concert, was promptly obeyed.

On the 23d January, 1862, the legislature of Louisiana passed an act ordering the Confederate notes to be received in payment and satisfaction of all debts due to the State, parish, and city corporations; and the State treasurer, tax collectors, and collecting agents, and all other officers of the State, parish, and city corporations, were directed to receive the same in payment and satisfaction.

Act of La. Legislature, 1862, p. 82.

These acts of the executive and legislature of Louisiana are of the character of those described in the case of Texas *vs.* White, 7 (Wallace, p. 733,) and are to be regarded as valid, so far as they affected Confederate notes as mere money, and as they regulated the civil intercourse of men in relation to that money.

So completely were these notes money that they were recognized and permitted to circulate as such by the authority of the United States.

The proclamation issued by General Butler, commanding United States Army of occupation, on the 1st May, 1862, said:

"The circulation of Confederate bonds, evidences of

debt, *except notes in the similitude of bank-notes issued by the Confederate States*, or scrip, or any trade in the same, is strictly prohibited. It having been represented to the commanding General by the city authorities that Confederate notes, in the form of bank-notes, are in a great measure the only substitute for money which the people have been allowed to have, and that great distress would ensue among the poorer classes if the circulation of such notes were suppressed, such circulation will be permitted so long as any one may be inconsiderate enough to receive them, until further orders."

P., 1864. Parton's "Butler in N. O.," p. 294.

This circulation of Confederate notes was not prohibited until the 27th of May, 1862.

See Proclamation of General Butler of 16th May, 1862.

See Proclamation of General Butler of 19th May, 1862.

Fourth. The aims and purposes of the military conspirators who caused Confederate notes to be issued are matters entirely disconnected with the quality and character the notes received as money in the daily concerns of life. So soon as they became a circulating medium, their use and employment by the people was without any relation to the objects for which they were issued.

See the observations on paper money in McCulloch's Commercial Dictionary, vol. 1, pp. 71 and 72. Edition, Philadelphia, 1840. Article Banking.

See, also, I. R. McCulloch's Notes on Smith's Wealth of Nations, note IX, section 1, vol. 4, p. 207. Edition, Edinburgh, 1828; and same vol., pp. 227 and 228.

Fifth. The relation of debtor and creditor—not of bailor and baillee—existed between the plaintiff and defendant by a transaction in money, in its character as such; the

obligation of the debtor was to pay money; if that obligation be modified or destroyed, the obligation of the contract is violated.

Story's Com. on Const., § 1372, 1379.
Sturgis *vs.* Crowninshield, 4 Wheaton, 197.
Marsh *vs.* Burroughs, Am. Law Reg. for November, 1871, p. 725, at foot.

Sixth. The obligation of the contract between plaintiff and defendant was destroyed by article 127 of the constitution of Louisiana, adopted in 1868, which declares that "all agreements, the consideration of which was Confederate money, notes, or bonds, are null and void, and shall not be enforced by the courts of this State."

This is the article relied on by the supreme court of Louisiana in this case.

See Rec., p. 52.

It is urged by the defendant in error (see his brief, p. 3) that the supreme court of Louisiana refers to the constitution of 1868 only in a narrative form, but does not thereon decide the cause, but decides it on its own established jurisprudence.

Jurisprudence ought not to violate the obligation of contracts; and the position assumed is unsound.

The court of Louisiana, in view of the article 127 of the constitution, could not decide in any other way. So long as the question was one resting in the view taken by the supreme court of Louisiana, of the common law of the State, or of what was public policy, the decision might have annulled or sustained the contract, as the judges were inclined. But so soon as the constitution of the State said such contracts shall not be enforced, then the judges could no longer enforce the contract, even if they were of opinion that they were not contrary to public

policy. The judgment, then, rests on the constitution alone.

Seventh. It has been pretended, and unfortunately in some cases with success, that contracts into which there entered a money price or consideration at a time when Confederate notes were the only currency were at that very time by the law of Louisiana illegal, and deemed a nullity; and the articles 1887, 1889, and 2026 of the Louisiana code are referred to in support of this position.

1887. "An obligation without a cause, or with a false or unlawful cause, can have no effect."

1889. "The cause is illicit when it is forbidden by law, when it is *contra bonos mores*, (contrary to moral contract,) or to public order."

2026. "Every condition of a thing impossible, or *contra bonos mores*, (repugnant to moral contract,) or prohibited by law, is null, and renders void the agreement which depends on it."

While the Confederate authority, and the law of Louisiana under it, ruled the State, it is clear that none of these precepts were applicable to the contract in question in this suit.

This court has held in Thorrington *vs.* Smith, (8 Wallace, 1,) that such agreements between private individuals, when not made in aid of the rebellion, are not contrary to public order or good morals, and are not prohibited by law.

Hence the supreme court of Louisiana, applying to a contract, considered lawful by this court, a law of their own State declares it invalid, and destroys its obligation.

This comes completely within the constitutional provision, and the application of the law of Louisiana impairs the obligation of the contract.

It is the very case provided for in the 25th section of the act of 1789, when there was drawn in question a

statute, *i. e.*, the articles of the code, and an authority exercised under the State on the ground of their being repugnant to the Constitution of the United States.

The supreme court of Louisiana in this case decided that the action was forbidden by the constitution of the State.

In the case of McCracken *vs.* Poole, (19 La. Reports, p. 359,) decided that a note given in a sum of so many dollars, when it was proved that the defendant, if he paid at all, would have paid in Confederate money, as was understood between the parties, was null and void, on the grounds of a constitutional and political character, which have been decided by this court to produce no such effect.

In other cases they have decided such agreements null, as contrary to the law of the State simply.

This question, it would seem, should have the judgment of this court on its merits.

THOS. J. DURANT,
For Plaintiff in Error.

DECEMBER 16, 1871.